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# ENVIRONMENTAL ASSESSMENT BOARD

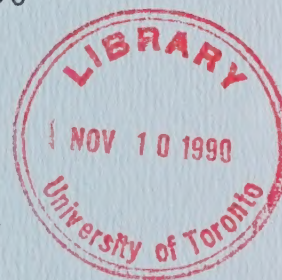
VOLUME: 251

DATE: Monday, October 29, 1990

BEFORE:

A. KOVEN Chairman

E. MARTEL Member




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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the offices of the Ontario  
Highway Transport Board, Britannica Building,  
151 Bloor Street West, 10th Floor, Toronto,  
Ontario, on Monday, October 29th, 1990,  
commencing at 10:00 a.m.

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VOLUME 251

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member





A P P E A R A N C E S

|                         |                          |
|-------------------------|--------------------------|
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| MR. P. ODORIZZI          |   | BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY                  |







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| MR. P.D. McCUTCHEON | GEORGE NIXON                                     |
| MR. C. BRUNETTA     | NORTHWESTERN ONTARIO<br>TOURISM ASSOCIATION      |





I N D E X   O F   P R O C E E D I N G S

| <u>Witness:</u>                    | <u>Page No.</u> |
|------------------------------------|-----------------|
| <u>JOHN KAPEL</u> , Sworn          | 45115           |
| Direct Examination by Mr. Lindgren | 45115           |
| Cross-Examination by Mr. Cassidy   | 45237           |





I N D E X   O F   E X H I B I T S

| <u>Exhibit No.</u> | <u>Description</u>  | <u>Page No.</u> |
|--------------------|---|-----------------|
| 1486               | Interrogatory Package containing OFIA Nos. 1, 3 and 5; OFAH Nos. 1 and 2; and MNR Nos. 4, 6, 9-13 and 16 re FFT Panel No. 2.  | 45114           |
| 1487               | One-page chronology of principal events prepared by MNR.  | 45115           |
| 1488               | FRI map of Kapuskasing District prepared by MNR published in 1989.  | 45118           |
| 1489               | Topographical map depicting existing maintained and non-maintained access roads in the Brunswick Lake area provided to Mr. Kapel from the MNR.                            | 45148           |
| 1490               | Two-page letter from Mr. Grayston, MNR, to Mr. Kapel dated October 23, 1990.  | 45151           |
| 1491               | FRI map of Gordon Cosens Forest prepared by MNR in 1989 depicting no-cut reserve along park boundaries, aerial spray boundaries, location of heron colony and eagle nest. | 45181           |
| 1492               | Collection of newspaper articles submitted by OFIA/OLMA consisting of articles in Northern Times dated May 8, 1985 and May 15, 1985 and Le Nord dated May 15, 1985.       | 45237           |
| 1493               | Two-page letter dated October 6, 1988 from Ken Durst, Spruce Falls Power and Paper, to Ms. Vivienne Iles, MNR.  | 45244           |





I N D E X   O F   E X H I B I T S  
(Cont'd)

| <u>Exhibit No.</u> | <u>Description</u>   | <u>Page No.</u> |
|--------------------|--|-----------------|
| 1494               | One-page regeneration survey<br>dated September 10, 1987.                          | 45256           |
| 1495               | Two-page regeneration survey<br>dated September 25, 1990.                          | 45256           |
| 1496               | Two-page document depicting Table<br>1 from 1985-1990 Gordon Cosens<br>Forest FMA. | 45257           |





1       ---Upon commencing at 10:30 a.m.

2                   MADAM CHAIR: Good morning. Please be  
3 seated.

4                   Good morning, Mr. Kapel, Mr. Lindgren.

5                   MR. LINDGREN: Good morning, Madam Chair.  
6 Good morning, Mr. Martel.

7                   We're ready to commence with the  
8 testimony of Mr. John Kapel, and his evidence is found  
9 at Tab 3 of Exhibit 1433A. And I can advise the Board  
10 that as far as we can determine there are no previous  
11 exhibits in this hearing related to this evidence.

12                   Before we begin, there are two exhibits  
13 to be marked; the first is an interrogatory package  
14 and, Madam Chair, this should be on your desk and I  
15 would have this marked as the next exhibit. It's an  
16 interrogatory package containing questions from the  
17 OFIA No. 1, 3 and 5; OFAH No. 1 and No. 2; and MNR No.  
18 4, 6, 9, 10, 11, 12, 13, and 16.

19                   MADAM CHAIR: That will be Exhibit 1486.

20                   MR. LINDGREN: Thank you.

21       ---EXHIBIT NO. 1486: Interrogatory Package containing  
22 OFIA Nos. 1, 3 and 5; OFAH Nos. 1  
and 2; and MNR Nos. 4, 6, 9-13  
23 and 16 re FFT Panel No. 2.

24                   MR. LINDGREN: And the second exhibit,  
25 Madam Chair, is a chronology of principal events. It's

1 a one-page document and it was prepared by the Ministry  
2 of Natural Resources, and I have had an opportunity to  
3 review this chronology with Mr. Kapel and we can agree  
4 that this chronology is substantially correct.

5 MADAM CHAIR: Fine. That will be Exhibit  
6 1487.

7 ---EXHIBIT NO. 1487: One-page chronology of principal  
8 events prepared by MNR.

9 MR. LINDGREN: And, Madam Chair, the next  
10 item of business is to have Mr. Kapel sworn to give  
11 evidence before this tribunal.

12 MADAM CHAIR: Please come forward, Mr.  
13 Kapel.

14 JOHN KAPEL, Sworn

15 MR. LINDGREN: And, Madam Chair, for the  
16 record I would like to indicate that I'm being assisted  
17 this morning by Mrs. Lyn Kapel.

18 MADAM CHAIR: Good morning, Mrs. Kapel.

19 DIRECT EXAMINATION BY MR. LINDGREN:

20 Q. Good morning, Mr. Kapel.

21 A. Good morning.

22 Q. I understand that you reside in  
23 Timmins?

24 A. Yes.

25 Q. And can you describe your present



1 occupation to the Board?

2 A. I'm self employed. We operate a  
3 family sawmill, we do a lot of mining in the mining  
4 field for the prospectors and mining development and  
5 also for general mining, we supply lumber.

6 I also have been a trapper for 25 years.  
7 I have planted trees for the Ministry of Natural  
8 Resources, I believe it was one of the first private  
9 contracts done in our part of the country.

10 I'm in the tourism business, and that  
11 would be about it, I guess, that I do. I think I'm a  
12 true northerner and anything else -- and I've been a  
13 transport driver for 19 years, I have put about  
14 2-million miles in all of northern Ontario, so I have  
15 been all over, and I am a pilot, I own a craft, I'm  
16 well aware of what's in northern Ontario.

17 Q. And, Mr. Kapel, picking up on your  
18 tourism experience, I understand that you were  
19 consulted by the Ministry of Natural Resources during  
20 the preparation of the tourism guidelines; is that  
21 correct?

22 A. Yes, I was.

23 Q. And when did that occur; do you  
24 recall?

25 A. I have no specific date, but...

1 Q. Now, I understand that you own the  
2 Kap'l Executive Lodge; is that correct?

3 A. Yes.

4 Q. And can you briefly describe to the  
5 Board where that's located, which MNR district and so  
6 forth?

7 A. On a map here behind me. We have two  
8 maps. On this map here, Brunswick Lake Road is here,  
9 it's in the middle of between Kapuskasing, Hearst,  
10 Chapleau, it's on the Missinaibi Park system.

11 Q. That is the Missinaibi River Waterway  
12 Provincial Park?

13 A. Yes, yes. It's approximately 90  
14 miles west -- northwest of Timmins.

15 Q. And perhaps you can indicate on that  
16 map where the lodge is located?

17 A. My lodge is located on the east shore  
18 of the north end of the lake, right here where this is  
19 red dot is, called Brunswick Lake.

20 MR. LINDGREN: And, Madam Chair, perhaps  
21 that map could be marked as the next exhibit.

22 MADAM CHAIR: That will be Exhibit 1488.  
23 Could you describe the map, Mr. Lindgren.

24 MR. LINDGREN: It's an FRI map prepared  
25 by the Ministry of Natural Resources and this

1 particular map was published in 1989.

2 ---EXHIBIT NO. 1488: FRI map of Kapuskasing District  
3 prepared by MNR published in  
4 1989.

4 MADAM CHAIR: And the area is, is it the  
5 district or...

6 MR. LINDGREN: It's Kapuskasing District  
7 and it's the Gordon Cosens Forest.

8 MADAM CHAIR: Thank you.

9 THE WITNESS: It's actually situated in  
10 the top corner of the Algoma District too, District of  
11 Algoma.

12 MR. LINDGREN: Q. When did you purchase  
13 the Kap'l Lodge?

14 A. I believe we purchased the lodge in  
15 '81.

16 Q. Why did you purchase it?

17 A. Well, the reason why we purchased  
18 this lodge because we had looked this area over and it  
19 had great potential for tourism and I spoke to the  
20 Ministry of Natural Resources, the district manager,  
21 what would be the future of that area in the words of  
22 access and he says to me that after the forest harvest  
23 will be gone that would be left to free to grow and  
24 everything else.

25 So after he has told me all these, I



1       processed and bought this lodge. This lodge was never  
2       a tourist outfit, this lodge used to belong to an  
3       American company called Johnston Wax out of Racine,  
4       Wisconsin, it was privately owned.

5                   Q. Can you generally describe the  
6       Brunswick Lake area in terms of the wildlife that one  
7       would expect to find there?

8                   A. Well, to start off, I should have  
9       got -- the parks people have spent three or four days  
10      here and the qualities to make it a park was very good,  
11      so you can see what you would have, in wildlife, in  
12      birds, animals it's very good up to now, but it has  
13      decreased quite a bit with public access because  
14      wildlife has left and some of their habitats have been  
15      destroyed.

16                   It has a rocky shore, some sand, has a  
17      few marshy areas that have a good aquatic wildlife, has  
18      a lot of nesting areas, osprey, bald eagle. And there  
19      is a fair abundance of moose which is starting to  
20      return a little bit, but at first it was a huge  
21      abundance of moose in that area.

22                   Q. And perhaps I could ask you to go to  
23      the map that has been marked as Exhibit 1488, and can  
24      you show the Board where the bald eagle's nest has been  
25      located and where the heron nest -- or the heron

1 rookery is located? '

2 A. The heron nest is right here on the  
3 east shore of -- pardon me, on the west shore between  
4 Foster Lake and Brunswick Lake, it's more or less on  
5 the shore of Brunswick Lake.

6 Q. And how far from the lodge is the  
7 bald eagle nest?

8 A. Oh, I would say it's about three to  
9 four miles -- kilometres.

10 MS. BLASTORAH: I'm sorry, Mr. Kapel,  
11 could you just point it out so that we could see.

12 Thank you.

13 THE WITNESS: Sorry. Here's the eagle's  
14 nest here.

15 MS. BLASTORAH: Okay.

16 THE WITNESS: And my lodge is here. I  
17 just put in a rough graph of...

18 MR. LINDGREN: Q. Is the eagle's nest on  
19 the shoreline?

20 A. No, this eagle's nest is off the  
21 shoreline.

22 Q. And where is the heronry located?

23 A. The heronry is located up on the west  
24 shore of -- east shore of Foster, it's more like a  
25 peninsula, it's two lakes. Two lakes; one lake here,

1 one lake here, actually that should be all blue up  
2 here. There's two, and everything is on this  
3 peninsula. It's very aquatic and a lot of wildlife  
4 seem to -- you know, wildlife is like people, creatures  
5 of habit, if they all like to live in that particular  
6 area, it's very more plentiful than other areas, you  
7 know.

8 Q. Is the location of the heronry  
9 accurately identified on that map?

10 A. On this map I believe it's right in  
11 the cut area, it's right out of -- they've got it  
12 marked here as a little mark here as half and half, but  
13 it's right in the cut area.

14 Q. And, Mr. Kapel, is the gray shaded  
15 area along there the park boundaries?

16 A. Yes, I presume that's the park  
17 boundaries, supposed to be 122 metres.

18 Q. And is it your evidence that the  
19 heronry is out of the park boundary?

20 A. Yeah.

21 Q. It's not within the boundary?

22 A. No. If it would have been in the  
23 boundary it might have been saved.

24 Q. Okay. Well, we will turn to that  
25 issue in a few moments. And aside from the wildlife



1       that we find in the area, can you give the Board some  
2       idea as to the tree species that one commonly finds in  
3       the area?

4                   A. Well, most of this area in this part  
5       of the country is mostly all spruce, poplar, a little  
6       bit of birch. It's a clay belt area, so I don't think  
7       you've had -- your trees like jack pine would grow very  
8       well, wouldn't be acidic enough soil for that. There's  
9       the odd little wee patch maybe here and there that you  
10      could find and there'd be the odd little wee patch of  
11      red pines that you find in that area which is rare when  
12      you start to go up that far north.

13                  Q. Now, is the area subject to an FMA?

14                  A. Yes, Gordon Cosens Forest.

15                  Q. The Gordon Cosens Forest. And which  
16      company holds the FMA for that area?

17                  A. Spruce Falls Power and Paper.

18                  Q. Okay. Now, before we turn to the  
19      evidence in your witness statement I want to ask you  
20      one general question and, that is: Are you opposed to  
21      all forms of logging?

22                  A. Definitely not. I'm in the logging  
23      business myself, but the only thing I approve of the  
24      type of logging, the structure of some other and the  
25      use of other people that are in the forest should be

1       respected too.

2                   Q.   Okay.  I would like to turn to the  
3       portion of your evidence dealing with access, and this  
4       is found at page 3, paragraph 5 of your evidence.  I  
5       would like to start off by referring you to OFAH  
6       Question No. 1.  In the third part of that question  
7       they asked you how your guests get to the lodge?

8                   A.   How my guests get to the lodge.

9                   Q.   Can you briefly describe how your  
10      guests got to the lodge when you first purchased the  
11      lodge and how do they get there now?

12                  A.   When I purchased my lodge I was  
13      assured that there was to be no road access to  
14      Brunswick Lake, but there was roads around Brunswick  
15      Lake and there was roads, not quite to the lake, to the  
16      river.

17                  At that time I bought it there was a gate  
18      put up, a gate established on the Missinaibi River  
19      which has -- the road is the major road that makes  
20      access to Brunswick Lake, that road.

21                  This bridge was manned by Spruce Falls  
22      Power and Paper and at the beginning of the bridge they  
23      had a big camp there called Camp 95, I believe it was,  
24      and they had 200 people that worked there which did  
25      that operation in that whole area.  And I went to meet

1 a fellow by the name of Garnet Bell who was the forest  
2 manager of Spruce Falls at the time and he assured me  
3 that that gate would be on. Matter of fact he called  
4 me to go see him, they want to know who was buying this  
5 place and what I was going to do with it.

6 Matter of fact he even approached me, he  
7 had some interested clients for the company to bring  
8 in. And the reason why this gate was on this bridge  
9 was Spruce Falls had built a big cabin on this lake  
10 called Camp 7, which I don't know, down the road or  
11 something this place was -- I don't know how you would  
12 say, it was called a garage in the bush, but it was  
13 sort of a company, fellows got together and built  
14 something that shouldn't have been there. You know  
15 what I mean, I'm sorry.

16 Anyways, Mr. Bell approached me and I  
17 removed this cabin out of there, this lodge out of  
18 there, in fact it's my home in Timmins today, and after  
19 we removed it they removed the gate off the bridge, so  
20 then it made public access. So there's a road called  
21 CSR 7 which runs on the east side of Brunswick Lake  
22 travels north, it's parallel with the lake which is  
23 north and south.

24 Q. Mr. Kapel, perhaps you can show the  
25 Board on that map where CSR 7 is located?



1                   A. CSR 7 is right there, and I haven't  
2 got enough map here to show another road called CSR 7A.  
3 Well, the Ministry have maps here but they don't seem  
4 to mark that road on their maps, I don't know why,  
5 maybe it wasn't supposed to be there in the first  
6 place. We haven't got that map to show the access to  
7 the river. They had a road going to the river up here.

8                   Q. Well, perhaps you can just draw it on  
9 that map.

10                  A. This is 7. This road will continue  
11 like this and then it goes -- there's a road, CSR 6  
12 goes like this, and you have the Missinaibi River down  
13 here, in fact that is where you have camp 95 here.

14                  And then down about here this river  
15 goes -- Brunswick River goes up here, makes a turn like  
16 this, and then you have a road and a little access road  
17 put in there.

18                  Funny thing about that access road there  
19 wasn't, that I could see, used for harvesting timber.  
20 So the district forester I went to -- not the forester  
21 but the manager of the camp, I went to see him and I  
22 asked him, I says: How come the people are allowed to  
23 go in there now, which he assured me that that was left  
24 going to be left all free to grow and that would be  
25 completely gone.

1                   And I had been advertising my lodge as a  
2 wilderness area. ...So he went in there with some kind of  
3 machine and he just uprooted the road and he stuck to  
4 his word and he put a big sign on the road that had on  
5 and so on, it was from day day on there was to be no  
6 more use of this road by vehicles or, I don't know, he  
7 gave a time limit I believe.

8                   And then an organization called the  
9 Kapuskasing Anglers and Hunters formed, and 200 of them  
10 got together and they were going to reopen everything  
11 and overnight somehow there was some tree planting  
12 being done in the area and a skidder happened to come  
13 in there and reopened all the road.

14                  I spoke to Spruce Falls and Spruce Falls  
15 says to me: Well, it's not our skidder. Well, I told  
16 them, I says: I don't know whose other skidder would  
17 be there, there's nobody else in that FMA is allowed to  
18 work in there, if it's not yours whose is it. It was  
19 just left at that.

20                  So then a group of people flew in, matter  
21 of fact these people were -- some were from Toronto and  
22 some were as far as Colorado I believe.

23                  Q. And you're referring to guests at  
24 your lodge?

25                  A. Yes. And these guests flew in, I

1 advertise at the Sportsman Show in Toronto here, a  
2 helicopter service out of Kapuskasing which I brought  
3 these guests in, they flew in with their private  
4 aircraft to Kap and they were fishing at the lodge.

5 The second day when they were there they  
6 went down the river for a little ride and there was a  
7 Winnabego parked there, and the gentleman came back and  
8 he was very nasty with me, and I had to hire a school  
9 bus from Kapuskasing and transport them back out. So  
10 that put the end of flying in to me. These guests  
11 haven't returned.

12 So I went on the road for quite a few  
13 years and there's a few still come by air with their  
14 private --

15 Q. So most of your guests now arrive by  
16 road?

17 A. No, in the last two years I've been  
18 told and I have letters, literature, that the roads  
19 were left to deteriorate and there will be no funds for  
20 repairs because the province has no money, so I could  
21 live with that.

22 So now I turned around and told my guests  
23 you have to from now on start to fly. So I finally  
24 lost a good number of my guests and got them to convert  
25 to flying, and now just lately I get a thing that



1 Spruce Falls wants to harvest some timber in the  
2 northern east end of Brunswick Lake about two or three  
3 townships down in a place called Ericson Township,  
4 Radisson Township, Champlain, Mons, they've got all  
5 this timber to remove to go to Hearst.

6 MR. LINDGREN: And, Madam Chair, Mr.  
7 Kapel is referring to one of the attachments to OFAH  
8 Question No. 1. If you flip several pages in to it you  
9 will find a map that looks like this and it's titled:  
10 Existing and Proposed River Crossings, Missinaibi  
11 Provincial Park.

12 MR. MARTEL: Is this the same provincial  
13 park we were talking about?

14 MR. LINDGREN: No, that was the  
15 Mississagi and this is the Missinaibi.

16 MR. MARTEL: Oh, Missinaibi, all right,  
17 thank you.

18 MADAM CHAIR: Which page is that, Mr.  
19 Lindgren?

20 MR. LINDGREN: It's attached to OFAH No.  
21 1.

22 MADAM CHAIR: I have the July 23rd  
23 letter.

24 MR. LINDGREN: That's right, and it  
25 follows that in the package.

1 MADAM CHAIR: Thank you.

2 MR. LINDGREN: You will see a document --

3 Q. And perhaps, Mr. Kapel, you can  
4 explain to the Board some of the concerns you have  
5 about this map?

6 A. This map was put out for a period  
7 of -- to transport wood to go to Hearst, so now they  
8 want to reroute this and reopen that whole road system  
9 back. And to start off with, I don't know who produced  
10 this map, is it the Ministry or Spruce Falls that  
11 produced this map here.

12 As you can see it says the Caithness Road  
13 goes across the railroad, goes into Hook, Conking  
14 Township. There is no such a road Caithness Road goes  
15 that far. I mean, this is a map made that we have to  
16 make up to a hundred to 80-year decision.

17 If you look, I have a map right here that  
18 was just given to me a week ago by the Ministry.

19 MADAM CHAIR: Is this the same map, Mr.  
20 Kapel?

21 THE WITNESS: Yes, and this is Caithness  
22 Road. See this little dotted line here, that's  
23 Caithness, this is Custom Sawmill.

24 MADAM CHAIR: So they're proposing to  
25 build Caithness Road?

1 THE WITNESS: No, that Caithness Road  
2 doesn't exist there.

3 MR. MARTEL: This doesn't exist?

4 THE WITNESS: No, sir, not that far. It  
5 only goes to here, just to about here.

6 MR. MARTEL: By Byng, the corner of Byng  
7 Township.

8 THE WITNESS: Yes, sir.

9 MADAM CHAIR: So the extension of it  
10 is --

11 THE WITNESS: Nil.

12 MADAM CHAIR: But they're proposing to  
13 build an extension to it?

14 THE WITNESS: No, no. This is what I'm  
15 saying, they pose this map to show. This map is --  
16 there's 500 of these went out to Joe public around to  
17 make a future there's three questions asked or four  
18 different accesses asked that they want to propose or  
19 approve of to transport this wood.

20 MR. MARTEL: And this is one of the  
21 alternatives?

22 THE WITNESS: Yeah, but that road is not  
23 there, the Caithness Road does not go there.

24 MR. MARTEL: It doesn't go beyond Byng?

25 THE WITNESS: (nodding affirmatively)

1 MR. LINDGREN: Q. And, Mr. Kapel, I  
2 understand that --

3 MS. BLASTORAH: I'm sorry, perhaps Mr.  
4 Kapel could show us what he was showing the Board, if  
5 he wouldn't mind.

6 MR. LINDGREN: Sure.

7 MS. BLASTORAH: Thank you.

8 THE WITNESS: Mm-hmm.

9 MS. BLASTORAH: Thank you.

10 ---Discussion off the record

11 MR. MARTEL: Are the three townships that  
12 they're proposing to harvest, are they the ones shaded  
13 in?

14 THE WITNESS: No, them are private I  
15 believe. Matter of fact the ones that are, more  
16 private ones on there that aren't marked. There's some  
17 townships in that area that belong to Spruce Falls, you  
18 can see on this map here.

19 MR. MARTEL: Which ones do they want to  
20 harvest, do you know what townships they are, Mr.  
21 Kapel?

22 THE WITNESS: Down in below here in  
23 Radisson here, in Mons, Ericson, they want to propose  
24 bring the wood all around around here, go through here  
25 and go here and then hook onto Caithness Road and



1        somehow go to Hearst.

2                    And these here roads down here, Caithness  
3        does not go to here. There's another road that comes  
4        in from Hearst over here, goes all around that way and  
5        goes into this, which is only a couple of kilometres  
6        across.

7                    MR. MARTEL: Will you say they have  
8        access into there now?

9                    THE WITNESS: Yeah, at the bottom here.

10                   MR. MARTEL: At the bottom.

11                   THE WITNESS: Yes.

12                   MR. MARTEL: But they want to build a new  
13        road.

14                   THE WITNESS: They want to use this  
15        existing crossing on Missinaibi to go across. They're  
16        going to go through private lands here. I don't know  
17        if they're going to build a road there, but this is all  
18        private land.

19                   MR. LINDGREN: Q. And, Mr. Kapel,  
20        perhaps we could back up a little bit to give this a  
21        little context. You received this map after you had  
22        participated in an exercise related to the Missinaibi  
23        Provincial Park?

24                   A. Yes.

25                   Q. And what were the proposals with

1       respect to the existing bridge crossings on the  
2       Missinaibi?

3                   A.   The proposals, you mean?

4                   Q.   In the Parks questionnaire, what was  
5       the MNR's proposal with respect to the existing  
6       bridges?

7                   A.   Well, I was going by the MNR's letter  
8       that I received that they would be totally -- roads and  
9       and bridges would be eventually removed and roads would  
10      be left to deteriorate, and that is how I sell my park.

11                  Q.   And then after you had filled out  
12      that questionnaire you received --

13                  A.   It's not only me, I don't know how  
14      many hundreds of questionnaires or thousands were given  
15      out, and after a week later we all received this other  
16      questionnaire about this proposal.

17                  Q.   And what --

18                  MADAM CHAIR:   Excuse me, Mr. Kapel.   The  
19      questionnaire you filled out had to do with the  
20      Provincial Parks Council proposal?

21                  THE WITNESS:   Yes.

22                  MADAM CHAIR:   All right.

23                  MR. LINDGREN:   Q.   And that original  
24      proposal said that the existing water crossings would  
25      be removed?

1                   A. Yeah, eventually would be left,  
2 everything would be left free to grow back there  
3 because it apparently was all -- silviculture was done,  
4 the harvest was finished.

5                   Q. And then a week or so, according to  
6 what you just said, a week or so later you received the  
7 second documentation or series of documents which  
8 indicated that the access --

9                   A. Pardon, or excuse me. It wasn't a  
10 week after, I had the Parks Council come to me, my  
11 lodge, and I toured them of the lake which was a very  
12 good idea I guess because they are the ones that are  
13 going to make the decision, want to see, and through  
14 them I found when they were leaving, that evening, that  
15 there was going to be this hearing in Timmins about  
16 this access to go to this Radisson, Ericson Township  
17 area.

18                  Q. And did the new proposal say anything  
19 about the access bridges, what was going to happen to  
20 the bridges?

21                  A. Well, it's written there on the other  
22 side there the different crossings; A, B, C and D and E  
23 and F and G opposite the map, the different proposals  
24 they had proposed for that. And one of the ones that  
25 they favored the most was using the Camp 95 bridge.

1 Q. So in other words, if I understand  
2 your evidence correctly, when you went through the  
3 Parks questionnaire there was an indication that the  
4 bridges would be removed and roads would deteriorate  
5 and then you find out that the Ministry's new proposal  
6 and new preference was that the access bridges would be  
7 maintained?

8 A. Mm-hmm, that's correct.

9 Q. And the new proposal came to your  
10 attention before or after the deadline for the  
11 questionnaire?

12 A. It came after. The only way I found  
13 out about the new proposal was through the Parks people  
14 when they left my place they said they were going to go  
15 to town to attend a meeting, and I asked them what it  
16 was for and that's when they told me, and when I  
17 arrived home that day my folder was in the mail to  
18 fill.

19 Q. And then again continuing into the  
20 documents attached to OFAH Question No. 1 there's a  
21 letter that you wrote dated October 22nd.

22 MR. CASSIDY: That's August 22nd, Mr.  
23 Lindgren.

24 MADAM CHAIR: That's August 22nd, Mr.  
25 Lindgren.



1 MR. LINDGREN: Thank you.

2 MADAM CHAIR: The letter from Mr. Kapel  
3 to the Minister of Natural Resources.

4 MR. LINDGREN: That's correct.

5 Q. And can you confirm for me that the  
6 first page of your letter basically sets out what you  
7 just told the Board; namely, that the new proposal came  
8 to your attention after the deadline for the Parks  
9 questionnaire?

10 A. Yes. I didn't think it was right for  
11 something like that to be given out to people after  
12 they filled a questionnaire for a park. The park is a  
13 lifetime -- how would you say, it's a lifetime decision  
14 that you make, and I think we have to be more specific  
15 of what literature we're giving to people that aren't  
16 familiar with the area or that have something to do  
17 with these parks, maybe a better understanding of what  
18 stuff like this you don't get too much.

19 Q. Now, on the top of page 2 of your  
20 letter you say that the map that accompanied the new  
21 proposal was misleading because it failed to show the  
22 full network of roads that can be used if the bridge  
23 and main roads are maintained.

24 A. Right.

25 Q. Why do you say that?

1           A. Because it was -- because I asked  
2           them, they sent me this one, and if you look at this  
3           map, this map was just made two weeks ago, it was sent  
4           to me - pardon me, it would be more than two weeks -  
5           and it's not at all have the amount of roads this has.  
6           This has way more, and there is still some that aren't  
7           on here yet.

8                     Compare this one to this one and it gives  
9           you a different idea. Like, you see -- may I show you  
10          like CSR 7 is not marked on here, the one you got from  
11          the parks people, from the Ministry.

12                    MADAM CHAIR: Mr. Kapel, are both these  
13          maps supposed to show only existing roads or is the  
14          parks map also supposed to show roads that could be  
15          built that are being planned?

16                    THE WITNESS: No, these are existing.

17                    MR. LINDGREN: Q. And, Mr. Kapel, just  
18          continuing with page 2 of your August 22nd letter, you  
19          indicate in the second paragraph:

20                             "Why was the proposal for this most  
21                             important river crossing not mentioned in  
22                             the questionnaire. This is a most  
23                             vital issue in regards to Brunswick Lake  
24                             and area if it is to be preserved as a  
25                             park. My answers and comments in the

1 questionnaire would certainly have been  
2 different had I been informed about the  
3 MNR's about face on this access  
4 proposal."

5 A. Correct.

6 Q. Why did you say that?

7 A. Well, I say that if you're going to  
8 make a public access to the lake I believe it needs for  
9 more of a bigger boundary to protect -- what is a park  
10 for, to protect the wildlife and conserve the -- and  
11 without access to it or limited access, pardon me, to  
12 the area, I don't think you would need that much of a  
13 boundary to the lake.

14 It was proposed to have the piece of land  
15 between the Missinaibi River and Brunswick Lake all put  
16 into a park, and I was asked by the Parks Council what  
17 I thought of it and I said to them, that since all the  
18 roads were going to be removed and the bridge was going  
19 to eventually go I didn't think that it would need that  
20 type of land too deep because it would protect itself  
21 due to access. Because where you have access you  
22 deplete the resource, that's very obvious. So if you  
23 limit access, your resource, wildlife and habitat is...

24 Q. And, Mr. Kapel, when you are asked to  
25 comment on a document such as the Missinaibi Provincial

1 Park document that you responded to, do you expect  
2 substantial changes like that to occur subsequently  
3 afterwards?

4 A. Not really. What do you mean --  
5 explain that again.

6 Q. Well, you have indicated that --  
7 well, this hasn't been made an exhibit, but there are  
8 excerpts attached to the OFAH Question No. 1, and you  
9 have indicated that the original park questionnaire  
10 indicated that the access, the existing access over the  
11 Missinaibi River would be removed.

12 A. Correct.

13 Q. And then some time after that you  
14 received the July 23rd letter--

15 A. Mm-hmm.

16 Q. --from the MNR that says their  
17 preference is now to keep it open.

18 A. Mm-hmm.

19 Q. And do you as a member of the public  
20 expect that kind of a change or about face when you are  
21 in fact asked to comment on a document like this?

22 A. Definitely not. I'd say the way I  
23 looked at it, like I told you, going to by what I've  
24 been told by MNR, but since day one I was told the same  
25 thing what was going to happen and now it changes



1 again. It got me sort of...

2 MR. MARTEL: Let me get this straight.

3 We have a proposal, a parks proposal that you're asked  
4 to answer some questions on, before the ink is even dry  
5 and a decision made I guess with respect to increasing  
6 the size of that, you learned something totally  
7 different--

8 THE WITNESS: Correct.

9 MR. MARTEL: --from what in fact had been  
10 proposed in the questionnaire which had been submitted  
11 to you several weeks before.

12 THE WITNESS: Correct.

13 MR. MARTEL: What's your impression then  
14 of what MNR is trying to do?

15 THE WITNESS: That's why I'm here for. I  
16 don't know, sir, that's why I'm here for.

17 MR. MARTEL: That's what you're here for.  
18 But it's strange that-- at least if a decision had been  
19 rendered on the first, the enlargement, one could look  
20 at the second. The two seem to be overlapping.

21 THE WITNESS: Even if the first one would  
22 have came out first, then you would be able to have  
23 better knowledge of the next one. You know what.I  
24 mean.

25 MR. MARTEL: Well, I'm just getting

1 strange vibes about why two things would happen almost  
2 at the same time without first deciding what you're  
3 going to do with one, or with the questionnaire on the  
4 first -- or the second proposal dependent on what's  
5 going to go on on the first proposal.

6 I hope, Ms. Blastorah, somewhere along  
7 the line we might get some sort of response how these  
8 two things were occurring almost simultaneously.

9 MS. BLASTORAH: Well, Mr. Martel, as I  
10 think you are aware, our opportunity to clarify things  
11 arises at this point only through cross-examination and  
12 reply, so depending --

13 MR. MARTEL: That will be so long from  
14 now, I was just wondering if you could have a little  
15 undertaking maybe, as you promised so many other little  
16 undertakings for us. I just -- I have difficulty  
17 fathoming what's happening here, all right.

18 MADAM CHAIR: Why don't we wait until the  
19 end of cross-examination and whichever questions Mr.  
20 Martel and I feel that we have some confusion about, we  
21 might ask for an undertaking.

22 MS. BLASTORAH: Fine. We will wait until  
23 after cross then, Mrs. Koven. Thank you.

24 MADAM CHAIR: Mr. Kapel, what year was  
25 the Missinaibi Provincial Park, when was it made a

1 provincial park?

2 THE WITNESS: Matter of fact I believe  
3 that park's been made since the last 25 years,  
4 something like that.

5 MADAM CHAIR: And is it a designated  
6 provincial park now?

7 THE WITNESS: It was, now it's in the  
8 stages of being - how would you say - first there was a  
9 park proposal and now it's in the stage of being what  
10 they're going to have in the park, like no hunting,  
11 it's going into that stage now, which I believe the  
12 Park Council which I have met personally.

13 MADAM CHAIR: So the questionnaire you  
14 were involved in had to do with, it's entitled zoning  
15 and policy options for the park.

16 THE WITNESS: Yes, yes.

17 MADAM CHAIR: And you can't understand  
18 why you were asked questions having to do with road  
19 access in the park by the Park Council and at the same  
20 time the Ministry of Natural Resources was working in a  
21 different way with respect to--

22 THE WITNESS: Correct.

23 MADAM CHAIR: --road access?

24 THE WITNESS: Yes, yes. If this all came  
25 out, said that they had even put this down in the park

1       proposal that we got that we had to fill, then you  
2       would have a different view on the picture of what you  
3       could do to this park. You know what I mean.  
4       Altogether it's like - how would you explain it - we're  
5       going to build a bunch of houses here but tomorrow  
6       we're going to put a four-lane down the middle of them.  
7       It sort of makes the people that live in the area don't  
8       feel too well.

9                       MADAM CHAIR: I can understand your.

10                      THE WITNESS: I don't have -- I have a  
11       hard time to explain.

12                      MADAM CHAIR: I can understand your  
13       confusion with maps because on the park map at the top  
14       of the legend it says that not all of the existing  
15       forest access roads are shown on that map.

16                      THE WITNESS: Yes.. What my thing is, is  
17       for such a decision to be made you should have  
18       something more specific. This is what I say, they're  
19       talking some places here 80 to a hundred years roads,  
20       20 years. The park is going to be there maybe for  
21       life. Well, you are going to have to have more -- we  
22       send a map like this down to somebody down here in  
23       Toronto or in southern Ontario that doesn't know this  
24       terrain or doesn't know that, it's a whole different  
25       ball game for him, he's only doing by what he probably



1 reads and sees.

2 MADAM CHAIR: ... Okay. Go ahead, Mr.  
3 Lindgren.

4 MR. LINDGREN: I think I can answer your  
5 first question as to when the park was first  
6 established. I'm reading from the document that Mr.  
7 Kapel was asked to respond to and this is a document  
8 entitled: Missinaibi Provincial Park, Proposed Zoning  
9 and Policy Options, and as I've indicated, there are  
10 excerpts attached to OFAH No. 1, but on page 24 there's  
11 an indication that:

12 "The first boundary for Missinaibi  
13 Provincial Park were established in 1970  
14 and were limited to the Missinaibi Lake  
15 area. Soon after a park reserve was  
16 established for the entire waterway.  
17 Missinaibi Provincial Park as it exists  
18 now was regulated in 1988 under the  
19 Provincial Parks Act."

20 So I take it it's a fairly recent park.

21 MADAM CHAIR: Thank you.

22 MR. LINDGREN: Q. Now, Mr. Kapel, this  
23 whole discussion started with your testimony relating  
24 to the CSR 7A road.

25 A. Correct.

1 Q. Is that road still there?

2 A. Yes.

3 Q. Is it accessible or usable by the  
4 public?

5 A. As of September the 1st, the long  
6 weekend, I had two gentlemen come from Timmins with  
7 just plain two wheel drive, matter of fact they brought  
8 four wheel drive equipment to get in but they never  
9 even used it, they drove to the lake and when they got  
10 there there was van parked there already, and the road  
11 is still used.

12 But another thing, my question on this, I  
13 would like to point out, this road, who funded this  
14 road and why was this road put in, and it's not on the  
15 forest management map here.

16 MADAM CHAIR: And this road goes to the  
17 shore of Brunswick Lake?

18 THE WITNESS: River that goes into that  
19 lake at the north end of Brunswick.

20 MADAM CHAIR: And this road was not built  
21 by Spruce Falls Power and Paper?

22 THE WITNESS: Oh yes, everything in that  
23 part of the country is strictly Spruce Falls.

24 MADAM CHAIR: And so this road was built  
25 for previous timber operations?

1 THE WITNESS: No, there was never any  
2 timber extracted there.

3 MADAM CHAIR: And it wasn't built to get  
4 into another road network?

5 THE WITNESS: No, it was to get -- to  
6 access their chalet.

7 MADAM CHAIR: All right.

8 MR. LINDGREN: Q. And, Mr. Kapel, Mr.  
9 Huff has provided you with a fluorescent orange marker  
10 and perhaps you can mark the location of CSR 7A on the  
11 map again.

12 A. It's right up here. Roughly up here.  
13 I can't -- it comes off of 7, 7 goes like that and it  
14 comes across.

15 Q. And it meets the Brunswick River?

16 A. Yeah. That's how you get access to  
17 the lake.

18 Q. Do you have any other comments you  
19 would like to make about CSR 7A?

20 A. Not really.

21 Q. Now, in paragraph 7 of your evidence  
22 you refer to a second access road CSR 8?

23 A. Correct.

24 Q. Can you identify that road for the  
25 Board on the map.

1           A. That CSR 8 is on the opposite shore,  
2           it is hooked up by the one back here where it crosses  
3           the river here and it's called, I believe 6, CSR 6, and  
4           I might be wrong but that roads goes like that.

5           MADAM CHAIR: Excuse me, Mr. Kapel. Mr.  
6           Lindgren, I think we're going to need a map that Mr.  
7           Kapel can actually draw on. He's off this map.

8           MR. LINDGREN: I believe I have one,  
9           Madam Chair.

10          MADAM CHAIR: Thank you, Mr. Lindgren.

11          THE WITNESS: Matter of fact, I have a  
12          map right here, if I put this one on the board, this  
13          one has all the roads. Do you want me to show you.

14          MADAM CHAIR: Go ahead.

15          MR. LINDGREN: perhaps, Madam Chair, that  
16          should be made an exhibit.

17          MADAM CHAIR: Exhibit 1489. What are we  
18          going to call this, Mr. Lindgren?

19          MR. LINDGREN: I would call it a  
20          topographical map depicting existing maintained and  
21          non-maintained access roads in the Brunswick Lake area  
22          and this was provided to Mr. Kapel from the Ministry of  
23          Natural Resources.

24

25



1       ---EXHIBIT NO. 1489: Topographical map depicting  
2                               existing maintained and  
3                               non-maintained access roads in  
                              the Brunswick Lake area provided  
                              to Mr. Kapel from the MNR.

4                       THE WITNESS: There's another thing here.  
5       We were talking about this Caithness Road. I just  
6       found another map there, I believe you can see the  
7       Caithness Road where it is. This is a map I found in  
8       the bush. Okay.

9                       MR. MARTEL: Fine, thank you.

10                      MR. LINDGREN: Q. And, Mr. Kapel,  
11       perhaps you could go to Exhibit 1489 and just indicate  
12       where CSR 8 has been marked on that map.

13                      A. Okay. CSR 8 goes here. This is CSR  
14       7 on this side, and CSR 8 is on the opposite side, be  
15       on the west shore.

16                      Q. And can you briefly describe for the  
17       Board your concerns about CSR 8 in terms of public  
18       access and remoteness of the area?

19                      A. Well, I had to go on the road, I used  
20       it CSR 8, I have a little trail that I use there, and  
21       I'm forced to use some type of access because I found  
22       that I never did use this, there was always too many  
23       people there.

24                      Q. That's CSR 7A?

25                      A. Yeah, so I used this one across from

1 the lake, and I have a barge and I can move guests,  
2 which ones that came by road. Now, apparently it's in  
3 very bad shape but they're talking about repairing the  
4 road, not to there, but to use this road corridor right  
5 around here, the Bournot Road down into Radisson Lake  
6 over here.

7 And as you can see that map, that shows  
8 you the park, these here fingers at the bottom of  
9 Brunswick Lake that hasn't got no roads on there, these  
10 are roads that you can travel.

11 Anyways, going down here, this CSR 8 when  
12 it was made, and I believe CSR 8 was made between 1976  
13 and 1981, when it was first made it was just a single  
14 lane access road, what I call a single lane, like a  
15 bush road, and they harvest the timber, but when they  
16 got to the end of Byng Township that particular time,  
17 which I'm trying to find out, the lawyers supposed to  
18 find out for me here, we asked the Ministry for the  
19 date when that winter road was being made.

20 Q. Oh, that's correct.

21 A. And this CSR 8 turned into a road  
22 width of approximately 190 feet. They had made a  
23 winter road alongside CSR 8 to extract the wood back in  
24 Byng Township I believe.

25 Q. And do you have any concerns about a

1 road corridor that wide?

2 A. Yes. One of my concerns to start off  
3 with is wide roads, as a trapper -- I don't trap that  
4 area but I know animals shy away from wide roads, and I  
5 think it's a proven fact through the trappers, and  
6 another thing what amazed me was when this road was  
7 being built there was a fellow there with a bulldozer  
8 and he was making this road and I asked him what he was  
9 doing, and there was seedling trees planted along this  
10 road, but the thing about it is I would have known this  
11 I'd had the opportunity to come to be able to view  
12 this, I would have ran home and got a camera.

13 MR. MARTEL: Pardon me for a moment. How  
14 far is this other road from CSR 8?

15 THE WITNESS: What other road, sir?

16 MR. LINDGREN: The winter road.

17 MR. MARTEL: The winter road.

18 THE WITNESS: Right beside it.

19 MR. MARTEL: Why would there be two roads  
20 built?

21 THE WITNESS: Well, that's what I want to  
22 know. They said it's for the purpose of -- the  
23 question I asked was: Why was the winter haul road  
24 made and when was it made. The winter haul road  
25 adjacent to CSR 8 was established to allow the hall

1 trucks to pass each other during hauling. Hauling was  
2 done only in winter. A winter haul road parallel to  
3 CSR 8 road desire to -- and then they said, a double  
4 wide all-weather road surface in order to reduce road  
5 costs.

6 MR. LINDGREN: Mr. Kapel is reading from  
7 a letter dated I believe October 23rd from the Ministry  
8 to Mr. Kapel, and I wasn't planning to file it as an  
9 exhibit, but at the break I will photocopy it and file  
10 it as an exhibit.

11 MADAM CHAIR: Thank you, Mr. Lindgren.  
12 Do you want an exhibit number for that now.

13 MR. LINDGREN: Perhaps we could reserve  
14 one now.

15 MADAM CHAIR: That will be Exhibit 1490,  
16 and this will be correspondence --

17 MR. LINDGREN: To Mr. Kapel from Mr.  
18 Grayston I believe, who is the district manager, and  
19 it's dated October 23rd, 1990.

20 MADAM CHAIR: How many pages?

21 MR. LINDGREN: Two pages.

22 MADAM CHAIR: Thank you.

23 ---EXHIBIT NO. 1490: Two-page letter from Mr.  
24 Grayston, MNR, to Mr. Kapel dated  
October 23, 1990.

25 MR. LINDGREN: Q. Now, Mr. Kapel, you



1 were talking about this winter road that was built  
2 parallel to CSR 8 and you started to mention seedlings.  
3 What concern did you have about seedlings in that area?

4 A. Well, that whole area was seeded on  
5 the west side of the lake.

6 Q. Was it seeded or planted?

7 A. Planted I mean, excuse me. Now, I  
8 have a map here, I don't know what year that was, and  
9 my concern is, what date, what time was the winter road  
10 made.

11 Q. And why is that significant?

12 A. And I asked that and I couldn't get a  
13 reply.

14 Q. And why are you concerned about the  
15 dates?

16 A. Because at the time the seedlings  
17 were being -- the trees that were planted there were  
18 being uprooted to make this existing winter road  
19 alongside this road that travels for about, from a  
20 little bit past the corner of Byng -- of Doherty here,  
21 a little bit past the corner over here of Doherty, you  
22 see that winter road. It runs parallel with Doherty  
23 Township and it goes up here, from here to CSR 7 I  
24 believe Abbott Road they call it, and there's another  
25 winter road that crosses right here on this corner,

1 where they cross the corner to cut the corner short,  
2 and that was also planted when the road was made up.

3 MADAM CHAIR: So your concern, Mr. Kapel,  
4 is to know -- you believe there would be bad planning  
5 to have planted a cut-over area and then shortly after  
6 build a winter road on top?

7 THE WITNESS: Correct.

8 MADAM CHAIR: Okay.

9 THE WITNESS: We are always crying for  
10 trees, and it's pretty hard to accept this.

11 MR. LINDGREN: Q. Do you have any  
12 estimate as to how many trees might have been affected  
13 by that road construction operation?

14 A. In the corner of that it would be  
15 about the length of half a township, and I believe that  
16 a township is, ten mile township, six mile townships in  
17 that area.

18 Q. So how many trees would that  
19 represent or can you estimate?

20 A. A hundred thousand.

21 Q. Pardon me?

22 A. A hundred thousand trees maybe.

23 MR. MARTEL: Affected.

24 THE WITNESS: That wide. The road has  
25 got to be at least 50 feet wide and you plant trees six

1 feet apart maybe, I might be exaggerating a little bit,  
2 figure it out. Just taken off -- the fact is that the  
3 trees were --

4 MR. LINDGREN: Q. Now, Mr. Kapel, one of  
5 the other --

6 A. Oh, excuse me. And my remark with  
7 the Ministry when I asked them at the time it happened  
8 they came and visited my place and I have a letter,  
9 it's in my thing here, saying that the trees were  
10 removed by a snowplow blade. I have never ever seen a  
11 snowplow that got 190 foot blade on it.

12 This is my remarks, and I have it written  
13 here somewhere. So obviously they're not denying that  
14 the trees were removed.

15 Q. And, Mr. Kapel, one of the other  
16 problems that you discuss under the issue of access is  
17 the water crossing over Doherty Creek. And perhaps you  
18 can go to the larger map and indicate for the Board  
19 where that water crossing is located.

20 A. Write on there?

21 Q. Yes, please.

22 A. Right in this area, right here is  
23 Doherty Creek.

24 Q. Perhaps you can circle it.

25 A. It's one of the major streams that

1 flow into Brunswick River.

2 Q. And how did you first become aware  
3 that there might be a potential problem with that water  
4 crossing?

5 A. One day, I don't know for what reason  
6 or other, I was flying over the lake and at the mouth  
7 of the Doherty where it goes into the lake, this whole  
8 complete area had a big circle of silt. The lake is  
9 not a very clear lake but it had a big - what you  
10 can -- it looked like something that you see in TV at  
11 Elliott Lake there where the slimes come down, that's  
12 what it had in the lake.

13 So I was sort of concerned because I  
14 spent lots of time there and I flew up the creek, the  
15 stream, the river they call it, and right at the  
16 crossing which that creek has it's -- in our part of  
17 the country up there we don't have what you call  
18 crystal clear waters, more or less water is sort of  
19 like a little bit dye from dead leaves and that, it's  
20 not like you have in southern Ontario, but you can tell  
21 the different very distinct between the clear water and  
22 murky water, and when I came to this crossing, that's  
23 where all the murk started. And so I went back and I  
24 got a vehicle and I went and looked the situation over.

25 Q. And what did you see there?



1           A. The erosion of both sides of the road  
2 on both sides of the stream. I have pictures, I don't  
3 know if we will be seeing later.

4           Q. That's correct, we'll show the  
5 photographs later, but perhaps you can indicate to the  
6 Board what you saw during your visit and why you were  
7 concerned about it.

8           A. Well, I was very concerned because in  
9 this part of the country where we are there it's all  
10 clay belt and it's very limited supply of gravel and  
11 any stream that has a gravel bed in it to me, in that  
12 part of the country, is a potential spawning bed and I  
13 believe the Ministry advertises very, very heavily that  
14 habitat is the secret of our wildlife, you know, it's  
15 got to be maintained and protected, and I believe  
16 there's a fine of a minimum -- or maximum fine of  
17 \$50,000 for destroying a fish hatchery, and I think  
18 it's on the top of the list of the Minister's Fish Act.

19           So I went over and I spoke to a  
20 gentleman -- there was nobody at Spruce Falls at the  
21 time, there was one gentleman there - the person that I  
22 wanted to speak to - there was a fellow there, he says  
23 his name was Mr. Parks, so I told him about the thing,  
24 he said he was going to have a look into it.

25           So this went on for some time and then

1 the Ministry was aware of it and then I went to see,  
2 back again - this was a good while later, I have dates  
3 there I believe of the letters.

4 Q. That's correct. You're referring to  
5 OFIA Question No. 3 and you indicate that your first  
6 meeting with Mr. Parks was in 1987?

7 A. Yes, that's about when it started.  
8 So they assured me they were going to look at the  
9 situation and this continued on again, this murk coming  
10 into the lake, it went on for a good period of time, so  
11 I was very upset because I have invested a good sum of  
12 money in that lake, and not only that, as a fisherman,  
13 a hunter, I believe there was something done there that  
14 shouldn't have been done and could have been rectified,  
15 like crossing a river stream on two hills; in that part  
16 of the country, everything is so flat, you should cross  
17 it at the flat areas instead of two hills. To me it's  
18 poor planning out there.

19 Anyways, when we finally got pretty mad I  
20 went to the Ministry one and I said, look, I said --  
21 pardon me, I went to Spruce Falls and Mr. Barrett --  
22 no, Vic Sleep I believe was the first fellow I talked  
23 to, he wrote me a letter saying that they were going  
24 going have somebody go look at it and nobody did go and  
25 look at it that I know of to my knowledge, or if they

1 did I didn't get no response really.

2 So one day I went back to town and I went  
3 to see Mr. Pete Barrett, he was the forest manager at  
4 Spruce Falls. I said, Mr. Barrett, I says, we've got a  
5 problem here. He says, it's the first of my knowledge  
6 I hear of it.

7 So when I went over to the Ministry the  
8 Ministry told me, I believe the district manager there  
9 was Mr. Grayston, and he told me that he'd look into  
10 it, and I told -- I says, Mr. Grayson, I says, this is  
11 enough I says, when I leave your office here, I says,  
12 I'm going to go to the provincial police and lay a  
13 citizen's arrest because I don't believe this has been  
14 going on for a year and a half and something has to be  
15 done.

16 So he immediately called Mr. Barrett and  
17 Mr. Barrett agreed that they would go down there  
18 immediately there the next day. So finally I got some  
19 action to get this repaired.

20 They went there with a big shovel and  
21 they brought gravel and brought gravel, but I had a  
22 look at what they did and I said to myself, that's not  
23 going to do. Two days later and act of God came by, we  
24 had one vicious rainstorm and all what they did  
25 disappeared, so we were back to square one again.

1 Q. Now, when you say disappeared, where  
2 did it go?

3 A. All went into the stream. In one way  
4 I must say about the gravel, at least the gravel washed  
5 back in, some gravel went into the stream instead of  
6 more silt, that I must admit. That part, but the part  
7 before that, with the silt going in, would have done  
8 harm to the spawning bed.

9 And then they finally said: Well, okay,  
10 we're going to go down there and look this over and  
11 they were telling me that they were going to get an  
12 expert from down south here, he's something to do about  
13 planting trees, erosion, and actually the whole thing  
14 just looked like the repair was just plain common  
15 sense, I would say, that anybody could have repaired it  
16 properly, you didn't need no expert or nothing, and  
17 maybe ask for some peoples' advice that live here and  
18 say: Well, what would be the, you know...

19 Because I say, like, a person that lives  
20 in his home, what I call my home northern Ontario, is  
21 different from a person that lives in southern Ontario.  
22 I don't know what goes on here and I know more what  
23 goes on home, you understand.

24 So we finally got this rectified and they  
25 did finally come down and did a job on it, and I must



1 admit today it's holding up, it's holding up up to now.

2 Q. And is that water crossing still  
3 there, is the bridge still there?

4 A. No, the bridge has been removed, it  
5 hasn't caused any problems to now.

6 Q. Are you satisfied --

7 A. But the only thing I asked the  
8 Ministry up to now is what you people do to check this  
9 stream for -- has it affected the stream, what has it  
10 done, and up to now my replies are is that well, they  
11 have never really checked into and as far as it's  
12 repaired. One fellow, one of them, Bob - what was his  
13 name - Minister of -- biologist, John, John, John, what  
14 was his name, John...

15 Q. Is that Mr. Thompson?

16 A. John Thompson, yeah. I believe he's  
17 one of the fellows that visit me at the lodge, yeah,  
18 was John Thompson. There was so many that came to my  
19 place, I have a hard time keeping track of them, the  
20 Ministry has so many people employed it's unreal.

21 So he said: Well, what do you think. I  
22 says: Well, we might have -- when the water goes real  
23 low we might go there with a hose and wash down the  
24 stream to get the silt out. That's what he told me.  
25 And as of this day I don't know whatever happened.

1                   I have asked do fish spawn there, what  
2   kind of fish grew up there and there's no -- and I  
3   figure as a tourist operator on this lake and the  
4   interests of other users on this lake, I think we are  
5   entitled to know what actually, and especially when the  
6   Ministry is advertising we got to make new spawning  
7   beds. Well, I think the best ones are the ones the  
8   good Lord put there, never mind, take care of them  
9   first and then we will make some more.

10                   Q. And, Mr. Kapel, are you satisfied  
11   with the length of time it took to resolve this  
12   particular situation?

13                   A. No, very unsatisfied.

14                   Q. Do you have any other final comments  
15   you would like to make about access before we move on  
16   to harvest.

17                   A. Not really.

18                   Q. Well, let's move on to harvest then.  
19   This is found at page 5, paragraph 11 of the witness  
20   statement. Now, you have already indicated on Exhibit  
21   1488 the location of the blue heron rookery and the  
22   bald eagle nest, and can you also advise the Board how  
23   wide are the shoreline boundaries of the Missinaibi  
24   Provincial Park?

25                   A. I believe they are 122 metres. In

1 fact I believe that the questionnaire we had there was  
2 two or three sizes of boundaries that we were asked to  
3 fill in, I can't remember right off what they were.

4 Q. Now, in paragraph 12 of your --

5 A. Oh, excuse me. May I ask you one  
6 thing more. In this particular area Spruce Falls, I  
7 believe in the past, I might mention, that there are  
8 other crossings in that Kapuskasing District that need  
9 repairs.

10 Q. In paragraph 12 of your witness  
11 statement you make a reference to the harvest of stands  
12 near the blue heron nest -- or rookery. Now, in your  
13 witness statement you indicated that the harvest took  
14 place in 1988 and the MNR Question No. 11 says the  
15 harvest took place in 1986 to 1987.

16 A. In the peninsula here.

17 Q. That's correct.

18 A. We call it a peninsula.

19 Q. And you've had time to recall the  
20 actual dates, and is the Ministry answer correct,  
21 1986-1987?

22 A. I believe so, but in all I don't  
23 think what happened in this particular area dates have  
24 anything to do with it, that is the way I feel, because  
25 what was done should not have been done.

1 Q. Okay.

2 A. It doesn't matter what year it was or  
3 when it was.

4 Q. So as far as you know the harvest  
5 occurred in the winter of 86-87. Now, after the cut,  
6 did you visit the rookery?

7 A. Definitely. I was very upset.

8 Q. And can you describe what you saw?

9 A. Well, I believe there's pictures of,  
10 we took of the rookery which, it's pretty hard to  
11 estimate how many nests were in that rookery, but where  
12 they went in and harvest the land, I don't see any  
13 flagging blue tape around the area that would say that  
14 this is a place that we have to keep out.

15 And what few trees were left are exposed  
16 to the heavy winds which I've been there this spring  
17 and they're just about all -- well, not all, but there  
18 is quite a few that are broken off and I don't give  
19 that rookery very much more years and it will have it's  
20 toll.

21 Q. Did you see any felled trees that  
22 contained nests?

23 A. Yes, we have pictures of them with  
24 the nests right in them, and I think the Ministry have,  
25 there were two game wardens who came with me and I



1 think this fellow John Thompson. By God, there's two  
2 fellows, there was one fellow who worked in Gogama, I  
3 can't remember his name, they were biologists. He was  
4 one of the fellows that couldn't find the rookery, I  
5 had to show him. I just can't remember his name. But  
6 anyways, what happened shouldn't have happened.

7 Anyways, this rookery to this day is not  
8 a really -- well, I got a letter from -- a Ministry --  
9 I wrote the Ministry, I went to see the Ministry and  
10 they told me in a letter that you have there that says,  
11 just about told me that I didn't know what I was  
12 talking about.

13 A gentleman by the name of Mr. McHale  
14 wrote me a fancy letter saying, that's your opinion. I  
15 says, sir, it is my opinion because that's what  
16 actually happened.

17 So matter of fact I took my movie camera  
18 there and I went and I sent the movie to somebody that  
19 could do something for me. I believe I have a letter  
20 of apology from Mr. McHale.

21 Q. That's right, this is found at  
22 Appendix B in the source book.

23 A. Stating that the Ministry is at  
24 fault, it was true what I said.

25 Q. This is a letter dated November 9th,

1 1988 to Mr. Kapel from Mr. McHale, the deputy regional  
2 director, it's Appendix B found under Tab 3, and in the  
3 second paragraph there's an indication:

4 "As he...", referring to Mr. Grayston,  
5 "...acknowledged he personally, his  
6 letter to you of September 10th was  
7 wrong, cutting has actually occurred  
8 within the rookery."

9 Is that the letter that you're referring  
10 to, Mr. Kapel?

11 A. Yes.

12 Q. Did you observe any waste wood within  
13 the area of the rookery?

14 A. Yeah. The thing about that part of  
15 the country is we have two sawmills and we have a paper  
16 mill and a plywood plant that do a lot of operation in  
17 that part of the country and they -- one uses strictly  
18 spruce and the other one uses strictly poplar.

19 The poplar that is left is what they call  
20 a high grade they use, they high grade the forest. I'm  
21 sure, Mr. Martel, you know what high grade means, you  
22 take the best and leave the worst.

23 So this is a -- makes a real mess there  
24 and this is what happened at this rookery. The trees  
25 that were taken at this rookery I don't think you can

1 count on one hand because they are still all lying on  
2 the ground there to this day. They were cut down,  
3 looked at, there is -- I think we will have slides of  
4 that later on.

5 Q. In your experience, Mr. Kapel, is  
6 waste wood a common problem in your area?

7 A. Yeah, because we operate a sawmill  
8 that utilize all species. Wherever I see a block of  
9 wood someplace, to us we have so much trouble getting  
10 wood it hurts.

11 Q. And is waste wood a concern to you?

12 A. Yes, it is.

13 Q. Why is that?

14 A. Like, my theory is, like they say, if  
15 you're not going to take it, leave it, leave it  
16 standing; or if you can't sell it, don't cut it.

17 And also in this area there's some good  
18 size spruce that was left. But there's one funny thing  
19 in that part of the country, wherever you see a pile of  
20 spruce trees lying and not picked up, the first thing  
21 the Ministry says budworm. The poor budworm, he's been  
22 blamed for so many piles of wood left in the bush that,  
23 I don't know, I think he's going to eat all our forests  
24 the way it's going there.

25 Because right now in the far end of

1 Brunswick Lake these people that want to make this road  
2 to go around have left piles of wood there and still  
3 been sitting there for four years, tree length spruce,  
4 which I brought to the Ministry's attention but it was  
5 never looked into.

6 Q. Now, Mr. Kapel, a few moments ago you  
7 referred to the fact that after the cut occurred within  
8 the rookery you went with the MNR to look at the  
9 damage.

10 A. Correct.

11 Q. And you referred briefly to the fact  
12 that the MNR representative didn't appear to know where  
13 the rookery was. What did you mean by that?

14 A. The MNR people went to the area of  
15 the rookery, they looked for a good part of the day,  
16 they couldn't find it, then they came back to the lodge  
17 and they asked me where it was.

18 Q. And did you take them to it?

19 A. Yes, sir. And they took photos of  
20 this rookery.

21 Q. Now, I understand that you have  
22 recently visited the rookery again this past summer?

23 A. This fall when I was hunting.

24 Q. And can you describe to the Board  
25 what you saw, how many trees are left?



1           A. Right now I would be very reluctant  
2       to say there would be three to four active nests maybe  
3       and by next year with the winter winds and if we have  
4       any more severe winds, I don't think -- that rookery is  
5       completely destroyed.

6           You see, I don't know if people are aware  
7       of a rookery, but the rookery is just like going to  
8       Florida and you see flamingos, you know, these  
9       rookeries -- we don't have flamingos here, ours aren't  
10      pink, ours are gray and it looked very nice and when we  
11      used to stand on our dock you can see where we're  
12      situated graphically on Kap'l Lodge, from the rookery,  
13      this is all marsh land which was a good flyway for  
14      these birds, especially when they had young, it was a  
15      good place for them to go and get food, and it would be  
16      nothing to see these birds going extensively back and  
17      forth in front of the Lodge which to me is part of my  
18      quality that I have for my tourists, they sit on the  
19      dock and see this, it makes -- for everything you see  
20      moving in the bush or in the air, it shows that the  
21      place is not dead, there's life there. You can't sell  
22      nothing if it's dead.

23           MADAM CHAIR: How many heron nests were  
24      there before the cut, Mr. Kapel?

25           THE WITNESS: We, me and the Ministry, we

1 did take some estimates and I don't know, I can't  
2 really tell you, but there was at least 25, 30 maybe.  
3 I would say 20 to 25 there.

4 MR. LINDGREN: Q. Did the MNR know of  
5 the existence of this rookery prior to the harvest?

6 A. I believe so. Because on one day, on  
7 June the 7th we had a vicious snow storm, mind you it  
8 snows in northern Ontario. June the 7th, Ministry came  
9 with an airplane to spot the rookery nest, and while  
10 they were there we had some other business to do at the  
11 far end of the lake and they picked us up in the plane  
12 and they took us and brought us back, and that is how  
13 we knew that they knew the rookery was there and they  
14 were keeping an eye on it.

15 MS. BLASTORAH: Mr. Lindgren, can I just  
16 ask for the year. We have a June 7th date, but...

17 THE WITNESS: Oh, the year. Well, I  
18 think ma'am, if you would look in the -- all us pilots  
19 have a logbook, eh, and if you look back in the logbook  
20 of Brunswick Lake there I'm sure there should be  
21 something in one of them aircraft that went to  
22 Brunswick Lake.

23 MS. BLASTORAH: So you don't recall what  
24 date it would be?

25 THE WITNESS: No, I don't recall what

1 date it would be.

2 MR. LINDGREN: Q. This was prior to the  
3 harvest, prior to the --

4 A. Yes, yes, way prior to the harvest.  
5 Matter of fact, what drew my attention, I said: How  
6 do you find a rookery from the air like that, and they  
7 explained to me is you look for large areas of white  
8 droppings, and it was very -- you could see it very  
9 well, which was news to me, I never -- because they are  
10 apparently a very messy bird.

11 Q. Now, after the cut you have indicated  
12 the Ministry had difficulty locating the rookery. Does  
13 that concern you?

14 A. Yes, because I believe that timber  
15 harvest can still continue and go on but there's some  
16 things that we have to protect, because I don't think  
17 rookeries are very common in northern Ontario, that I  
18 know of.

19 Actually that was the real one that I  
20 knew of. I heard of another one someplace else north  
21 of Kap, but that's about it, that I know of, and I have  
22 spent many years, I have spent my life in the bush all  
23 over.

24 I see nests but one here, one there, and  
25 that was one of the biologists told me, this fellow by

1 the name of Wheeler, he was in Kap. I said you knew  
2 this, now what's going to happen now. Well, they can  
3 go find some other place. Well, I don't think it's  
4 right to think that way.

5 Q. Mr. Wheeler was an employee of the  
6 Ministry of Natural Resources?

7 A. Yes. I think he was a biologist and  
8 I think he's still employed at the Ministry.

9 Q. Do you have any other final comments  
10 to make about the cutting of the rookery?

11 A. Yeah. I think in the future more  
12 care has to be taken where these places are and has to  
13 be looked into more. I don't think we have to have so  
14 much problems, and maybe the Ministry listen to some  
15 people too, you know.

16 I get an awful feeling that when you go  
17 to a Ministry's office and it's always the negative  
18 approach they give you, they're always right. Well, we  
19 are not all right, sometimes they're going to have to  
20 listen to some of the people or there isn't going to be  
21 nothing left, and the first thing you talk about spray  
22 and stuff like that, that will be another topic, we  
23 will come to that.

24 Q. Well, let's move to that topic right  
25 now, and this is found in paragraph 15 of your witness



1 statement. Now, in MNR Interrogatory No. 12 and again  
2 in OFIA No. 5, you discuss an incident that occurred in  
3 1982 wherein some of your guests were exposed to spray  
4 drift. Can you briefly describe to the Board what  
5 happened there and perhaps you can begin by indicating  
6 the general location of the boat on Brunswick Lake.

7 A. The date you have on there, I believe  
8 it is correct. Anyways, I spoke to these guests when I  
9 came to town just two days ago and these guests said to  
10 me that he would not prefer to be --

11 Q. Identified.

12 A. Identified. But anyways, on the west  
13 shore of Brunswick Lake in this bay here where we have  
14 a little road off the CSR 8 come in here, my guests  
15 were fishing in this bay here and there was an aerial  
16 spray plane going up and down this side here doing grid  
17 spraying.

18 They were fishing fairly close to shore  
19 and then one of the -- they came over to see me and  
20 said: What's he trying to do, that fellow? He says:  
21 He sprayed us. I said: What do you mean he sprayed  
22 you? It had to be an overspray, which it was, a drift  
23 of spray, and they got all excited.

24 So I went to the Ministry and I told them  
25 and they just said: Well -- matter of fact, one

1 impression I got was: Ah, don't worry about it, even  
2 if they spray your gardens it's okay to eat. Well, I  
3 don't look at things like that, I think spray is not a  
4 thing that I like very much, but obviously we have got  
5 to live with it some place, and there are some  
6 places -- and in particular area I asked that when they  
7 went down there, that I have a public access going to  
8 the lake, it's a trail that people walk. This trail is  
9 very abundance in raspberries, strawberries, which  
10 people from the city don't have wild stuff like that,  
11 they came down there.

12 So I asked the Ministry very politely,  
13 would you please, if you are so accurate with aerial  
14 spray, will you please keep off this trail so the  
15 guests -- I have a lot of guests coming in.

16 Q. Mr. Kapel, perhaps you can indicate  
17 for the Board on that map where that trail is located.

18 A. That trail is located right here, CSR  
19 8.

20 Q. And it's approximately across from  
21 your lodge?

22 A. Well, there's the road there. I will  
23 put a little mark there, okay.

24 Q. Okay. And please continue.

25 A. I asked them not to spray, but they

1 just deliberately sprayed. As a matter of fact, at the  
2 same time when I asked them not to spray that area they  
3 were spraying a little further up here, and there's an  
4 area -- there's a little hill there, I spent many days  
5 making these guidelines of tourism up and I told them  
6 that there's an area here that you see cars and  
7 vehicles on the road, if you spray that buffer zone out  
8 of there the road is going to be exposed to the lake.

9 Now, when I look and stand on my dock I  
10 see a road and if there is campers parked there you see  
11 everything there, and I asked them: Well, there's a  
12 strip there, could you just leave that strip, it  
13 doesn't matter what it is what's growing there, at  
14 least it would cover up, there would be enough trees to  
15 cover up the sight of road, because when you advertise  
16 wilderness and the fellow standing on your dock and he  
17 looks up there and there's a camper trailer parked  
18 there, he sort of -- sometimes what people don't know  
19 what's on the other side of that 122 metres, you don't  
20 get asked questions and don't feel too bad and he comes  
21 back.

22 But that was ignored too. So when I went  
23 in the office the first thing he asked me, he says: Oh,  
24 you're always against spray, always against spray.  
25 Well, I never ever said not to spray, I told him to

1 spray elsewhere and protect my interests, and totally  
2 ignored.

3 So you get kind of hot underneath the  
4 collar, you don't think you're being treated right  
5 because I'm trying to bring tourists to this country  
6 and isn't that what the government is trying to  
7 promote, and when you have them working against you,  
8 well it's pretty hard to win.

9 Q. Mr. Kapel, are you aware of any other  
10 spray drift incidents along the Missinaibi River?

11 A. Yes. Mr. Wayne Burk who was doing  
12 the -- he is the district -- or he's the -- for the  
13 park, Quetico Park, he's the, what do you call, he runs  
14 the park. Yeah, I think he's superintendent of Quetico  
15 Park, but he was the beginning fellow to make the  
16 planning for the Missinaibi Park.

17 At the time of aerial, when he was there,  
18 I flew him over to the Missinaibi River where the river  
19 had been criss-crossed, the buffer zone had been  
20 criss-crossed with aerial spray. He has all the  
21 pictures of this and he was with me, and he was very  
22 upset because here he is in the process of making plans  
23 for a park and the buffer zones are sprayed, in this  
24 particular area, you could tell it was just poor  
25 neglect that it was done.



1 Q. And how do you know that the buffers  
2 had been sprayed?

3 A. Well, it's right from the shoreline  
4 to, the shoreline right across, like when you spray one  
5 shoreline it went right across. Matter of effect, he  
6 took pictures of this and I've been trying to get ahold  
7 of him but I just can't seem to, but the Ministry has  
8 pictures of it.

9 And while he was there he also took  
10 pictures. Well, that goes back to another thing, while  
11 we were on this thing about spray, I raised a lot of  
12 interest for these herons on this peninsula and at the  
13 other end of this peninsula we have bald eagles which  
14 in this province is called endangered specie.

15 MR. LINDGREN: And, Madam Chair, I  
16 believe that Mr. Kapel is referring to paragraph 16 of  
17 his witness statement.

18 THE WITNESS: Anyways, when this place  
19 was all harvested and they did the damage I was very  
20 upset, annoyed. I said now that you've done one, don't  
21 do two, just pack up and get out of there, you don't  
22 disturb them birds, leave them.

23 No, they insisted, we are going to go  
24 spray, we have got to spray, we have got to prove a  
25 point. Well, you don't have to prove a point to me

1 because I have seen so many mistakes already, I said,  
2 you can't do that, you have oversprayed guests on the  
3 lake over here, you have criss-crossed the river over  
4 here, now we're playing with bald eagles' nests and  
5 part of a heron rookery on the other side here and the  
6 amount of trees that are planted on this peninsula is  
7 very limited.

8 Q. And was there a competition problem  
9 there, in your view?

10 A. The competition problem wasn't very  
11 serious there. Matter of fact the only competition  
12 problem I seen was a blueberry patch in the middle of  
13 this thing, which to me another thing, that was the  
14 only place we could pick blueberries, and I asked the  
15 Ministry - because we have no blueberries in that part  
16 of the country, and it's a little patch there, maybe  
17 about four or five acres at the most which I say in my  
18 statement that was very rare because blueberries don't  
19 grow in the clay belt.

20 And in this patch of blueberries there  
21 was a little winter access road that went up the strip  
22 and I believe I wouldn't be exaggerating if there is 75  
23 trees planted in that little road strip and the rest of  
24 the blueberry patch there isn't a tree and it hasn't  
25 been sprayed -- hasn't grown anything, hasn't been

1 planted and it's been all sprayed.

2 Q. And are there blueberry plants there  
3 now?

4 A. No, it's dead like a desert, there's  
5 nothing.

6 Q. And did you convey your concerns to  
7 the MNR?

8 A. Yes, I did before that. Oh, we are  
9 going to do a good job. They were going to put  
10 balloons all in there, have people on the ground. And  
11 another thing they did, when the time come they were  
12 going to spray this late in the season, there were  
13 never any signs posted.

14 Q. And how do you know there were no  
15 signs posted?

16 A. Because mostly all areas that you go  
17 that they spray they have posted signs. I have walked  
18 this place many times; many, many times and after the  
19 spray was done and there was never any signs posted.

20 Q. Now, I would like to refer you to  
21 Appendix D of the appendices. I understand that you  
22 had written to the Premier about your concern about the  
23 bald eagle nests?

24 A. Yes. I got his assurance that it  
25 would be looked after and handled.

1 Q. And you received Appendix E which is  
2 a response from the Minister of Natural Resources.

3 A. That was the response I got.

4 Q. And I would like to ask you two  
5 questions about what the Minister wrote, and in the  
6 second full paragraph, the last line, he writes that:

7 "In the Brunswick Lake area the foresters  
8 work closely with the biologists to  
9 ensure that adequate protection was given  
10 to the heron colony and eagle nests  
11 throughout all stages of the forestry  
12 operations from harvesting to plantation  
13 tending."

14 Do you agree with that?

15 A. No.

16 Q. And why not?

17 A. Well, obviously the proof is there,  
18 you can see it's gone.

19 Q. What's gone?

20 A. The rookery.

21 Q. And in the third full paragraph,  
22 again in the last sentence, there's a statement that:

23 "I...", the Minister,

24 "...can assure you we will closely  
25 monitor the spray program in the



1 Brunswick Lake area to ensure it is  
2 confined to the approved area."

3 Were you assured or satisfied with that  
4 assurance?

5 A. Definitely not.

6 Q. Why not?

7 A. Because at this far end of the lake  
8 here the airplane came over and sprayed the buffer  
9 zone. After being told what they are going to do they  
10 went and deliberately did it, and a good part of this  
11 shoreline -- as you can see, there isn't much shoreline  
12 left here, and a good part of the shoreline you have to  
13 be looked very well because there was a lot of conifer  
14 tree but any broad leaf is dead, broad leaves just  
15 don't die in great quantities like that.

16 So there's more than the strip at the far  
17 end of this peninsula that has been wiped out, and you  
18 can see the strip plain as day, I believe we have  
19 photos of it.

20 Q. That's correct.

21 MR. LINDGREN: And, Madam Chair, perhaps  
22 this should be marked as the next exhibit, and this is  
23 again an FRI map of the Gordon Cosens Forest prepared  
24 by the Ministry of Natural Resources in 1989 and this  
25 particular map indicates the no-cut reserve along the

1 park boundaries and the aerial spray boundaries, as  
2 well as the location of the heron colony and the eagle  
3 nest, and I can indicate that the aerial spray  
4 boundaries are indicated in orange marker.

5 MADAM CHAIR: That will be Exhibit 1491.

6 ---EXHIBIT NO. 1491: FRI map of Gordon Cosens Forest  
7 prepared by MNR in 1989 depicting  
8 no-cut reserve along park  
9 boundaries, aerial spray  
10 boundaries, location of heron  
11 colony and eagle nest.

12 MR. LINDGREN: Q. Mr. Kapel, can you  
13 indicate to the Board whether or not the orange line  
14 depicts the aerial spray boundary that goes into the  
15 no-cut reserve?

16 A. Yes, right here at this end and at  
17 this end here.

18 Q. And which area did you take --

19 A. Like they have it marked here,  
20 whoever has marked the orange, it goes right to the  
21 lake.

22 Q. And that is the photograph that we  
23 have filed?

24 A. Now, I have got a reply that there is  
25 only 4 trees that were damaged.

Q. Who told you there were four trees  
damaged?

1                   A. I have a Ministry letter, the  
2 Ministry letter wrote to me that there was only four  
3 trees.

4                   Q. And what's your view on the extent of  
5 the damage?

6                   A. Well, when you're going across the  
7 lake from Kap'l Lodge to pick up your guests you can  
8 see the squat from about oh, a mile away or a mile and  
9 a half away you can see -- so I believe that you  
10 wouldn't see four trees that far, it's obviously more  
11 than four trees.

12                  Q. Now, I understand that after the  
13 spray operations occurred in the fall of 1988 you went  
14 into the area, the sprayed area?

15                  A. Yes.

16                  Q. What did you see there?

17                  A. Well, the fall after they sprayed it  
18 was very debatable where and when they were going to  
19 spray, and up to then, up to our knowledge, it wasn't  
20 sprayed because they wouldn't tell us. They said they  
21 were going to do and they weren't sure.

22                  So every year we hunt that area and I had  
23 a bunch of local -- matter of fact, I had a group of  
24 Chinese people, they come every year to go in that  
25 peninsula and there was always good wildlife on there.

1 We went there, and there was nothing. I looked, it was  
2 all sprayed. Well, I lost some clients because that  
3 was their favorite spot, so...

4 Q. And why do you suppose there was no  
5 wildlife there?

6 A. Because it was sprayed. The wildlife  
7 will come back but not for that particular -- to me,  
8 like falltime, you get so many moose licences you have  
9 to make so much money, our time is so limited with what  
10 we can do in tourism and to us everything counts, and  
11 a little thing like this hurt me, I had to go looking  
12 for new clients because they were upset about it, Oh,  
13 you sprayed the area and, you know, people start  
14 talking, well the moose is no good now in that area and  
15 all this, so and truly I don't honestly know if it is  
16 or not.

17 Q. Now, you have indicated a moment ago  
18 that there was a spray drift into the park reserve that  
19 killed some trees?

20 A. Mm-hmm.

21 Q. Have any of your guests ever observed  
22 or commented upon the trees that have been killed by  
23 herbicides?

24 A. Oh, definitely.

25 Q. What do they say to you?



1           A. Well, they say it looks bad. In  
2 other words, they tell you: Why does the Ministry  
3 leave a buffer zone and then go spray it. I mean,  
4 there's no -- but you'd have to have -- like I deal  
5 with some farmers that come out of the south, southern  
6 States, northern States of United States and they're  
7 very familiar with aerial sprays and all this, they hve  
8 a lot of controversy over this, they're running into a  
9 very big problem now with that overspraying.

10           We have some trees that grow off CSR 8,  
11 they've got to be the weirdest looking spruce trees  
12 I've ever seen, and I don't know what for.

13           Q. And, Mr. Kapel, I understand during  
14 this past fall you were into the cut-over area again.

15           A. Mm-hmm.

16           Q. And did you observe any particular  
17 stick nest that had not been previously identified?

18           A. Any, pardon?

19           Q. Any nests?

20           A. Yeah, on this peninsula here about  
21 halfway, way -- oh, a good say 300 metres in off the  
22 shore, from the shoreline, there's some big dead trees  
23 left and there's osprey nests and that whole area has  
24 been sprayed.

25           I don't know if them ospreys will come

1 back. Ospreys not bad, but I don't know if he'll come  
2 back because maybe there's not enough protection around  
3 there and all the trees are gone, because osprey is not  
4 one that will nest in a live tree either, but even so,  
5 I don't think that should have been, and probably if  
6 the tree was alive he would have been cut down anyway.

7 MR. LINDGREN: Now, Madam Chair, this  
8 might be an appropriate time for a break. We have a  
9 few slides that Mr. Kapel would like to show the Board  
10 as well as the video, and perhaps that could be done  
11 after the lunch break.

12 MADAM CHAIR: Good idea, Mr. Lindgren.  
13 We will see you at 1:30, Mr. Kapel.

14 THE WITNESS: Thank you.

15 MADAM CHAIR: Thank you.

16 ---Luncheon recess taken at 12:05 p.m.

17 ---On resuming at 1:30 p.m.

18 MADAM CHAIR: Please be seated.

19 MR. LINDGREN: Madam Chair, I have placed  
20 on your desk a copy of Exhibit 1490 which is the  
21 October 23rd letter.

22 MADAM CHAIR: Thank you.

23 MR. LINDGREN: This afternoon we will  
24 commence with the slides, there is only 12 slides and I  
25 think we can go through them fairly quickly, and then

1 we will commence with the videotape, and then I have  
2 two final questions for Mr. Kapel and I would expect  
3 that would take at least another hour.

4 MADAM CHAIR: Are the slides an exhibit  
5 already, Mr. Lindgren?

6 MR. LINDGREN: Well, the slides are  
7 actually the photographs found in Exhibit 1435.

8 MADAM CHAIR: All right, thank you.

9 MR. LINDGREN: Q. And, Mr. Kapel, I will  
10 operate this machine, if I can, and you can tell me  
11 when to move forward.

12 A. Maybe I better sit over there so they  
13 can see.

14 Q. Whatever you like.

15 MADAM CHAIR: We can see here.

16 MR. LINDGREN: Q. And, Mr. Kapel, for  
17 each slide, can you briefly describe what we're looking  
18 at and can you indicate why you might be concerned.

19 MR. LINDGREN: And, Madam Chair, this is  
20 photograph No. 1 in the supplementary source back.

21 MADAM CHAIR: Thank you.

22 THE WITNESS: This is the bridge that  
23 crossed Doherty Creek. As you can see it's eroded here  
24 which is just minor, not compared to both sides of the  
25 Doherty Creek, and this side and that side you see I

1 guess another photo of it.

2 MR. LINDGREN: Q. And you took this  
3 photograph in July, 1988?

4 A. Yes, I did. I marked on my -- we  
5 dated them. There, as you can see here, the erosion  
6 down here and this is the same thing on the other side  
7 of the creek which I think we have.

8 MR. LINDGREN: And, Madam Chair, we are  
9 now looking at photograph No. 2.

10 THE WITNESS: And there is another thing  
11 too, while we're looking at this, this is a good  
12 picture right here. You see this bridge here, it's not  
13 in very good shape, eh, and throughout this district  
14 there's got to be at least 200 odd some bridges or more  
15 in these forest access.

16 What concerns me great much is there's a  
17 letter that I've written to a fellow by the name of Mr.  
18 Sleep that works for -- who's a forester for the Spruce  
19 Falls people, and the reason would concern me is I had  
20 a group of people coming in one time, to my lodge, and  
21 there was a feller buncher - you understand what a  
22 feller buncher is?

23 MADAM CHAIR: Yes we do, Mr. Kapel.

24 THE WITNESS: A delimber -- pardon me, a  
25 delimber was delimbing wood along the main road.



1 Before the wood came to that area, there was a sign  
2 there caution, be careful. So my guests were cautious,  
3 they were careful and they just drove and they slowed  
4 down and waited until this fellow, because his boom,  
5 you know, extends 20, 30 feet and it was going across  
6 the road back and forth.

7 So finally they figured we better run, so  
8 when they did and they came back and they almost ran  
9 into it, he must have been trying to hide. So this got  
10 me concerned. I said: Well, what really is the law in  
11 the bush on these forest access roads, we have so many  
12 of them and they are not policed, what does the word  
13 travel at your own risk really mean when you come to  
14 stuff like that. Are you putting things in people's  
15 hand that are detrimental to other people on the road,  
16 that people say: Well at your on risk that you're at  
17 fault and he's at fault.

18 Sometimes people look at this as an  
19 advantage. This as myself is one of the things that I  
20 suggested, that how come the district attorney in the  
21 police department are involved, like I went to the  
22 police department to Sergeant O'Neil who is the  
23 district Kapuskasing officer and I asked him what is  
24 the things that put, if any accident happen, and his  
25 explanation to me was: There is so many roads, we

1 can't patrol and everyone has got to make out on his  
2 own. Well, to me, I look like this risk of travel at  
3 your own risk is like giving -- if somebody wants to  
4 the drive like a maniac and somebody wants to drive  
5 like a decent person, and you mark travel at your  
6 own -- if you're both, because you got into fault,  
7 everybody's at fault. So where does law, and he said  
8 there is no law. They can't do anything about that.  
9 This was his words. Matter of fact I had here -- I  
10 think it's at home, that written paper from -- I spent  
11 a good half hour with him at the station, and I got a  
12 letter from Vic Sleep and he told me that if my guests  
13 didn't like that road to use alternative road, which it  
14 is an alternative road, but that road is gone now,  
15 there's is no road.

16 MR. LINDGREN: And, Madam Chair, Mr.  
17 Kapel is referring to OFIA No. 3 and there is an  
18 attachment dated June 21st to Mr. Kapel from Mr. Vic  
19 Sleep and the reference to the alternative route is  
20 found in the final paragraph.

21 Q. Do you have any more comments on this  
22 photograph?

23 A. No, that's fine. It was -- I didn't  
24 know we had that picture of that bridge. But see, what  
25 I'm trying to say, if at own risk, and that bridge is

1 wide open for anybody to go. If a person went there  
2 with some child or some children in his van and the  
3 bridge happened to collapse, who is really responsible.  
4 You know, I mean, are we going to do something when  
5 something bad is done already, or maybe to prevent  
6 things there must be some kind of way we can either  
7 remove the bridge, post the bridge, or do something so  
8 it's not -- so we won't end up with a tragedy.

9 Okay, I guess move to the next slide.

10 Q. This is photograph No. 3?

11 A. Yeah. This is on the other side of  
12 the bridge. You can see the same, you can see all the  
13 silt piled up here, here, and that's not -- this isn't  
14 dry, matter of fact that creek is very low at that  
15 particular time. Next?

16 Q. This is No. 4.

17 A. That's another side. There's four  
18 corners, four different places. There's all up here,  
19 that erosion. Okay.

20 Q. This is No. 5?

21 A. Here's some more. This is another  
22 corner.

23 Q. And does that lead into the creek?

24 A. Yes.

25 Q. And this is No. 6.

1                   A. Yeah. As you can see the bridge  
2 here, that goes into the creek.

3                   Q. This is photograph 7.

4                   A. Yeah. Here we have is the heron  
5 rookery and here's a nest here I believe, right here,  
6 one here. Okay.

7                   Q. Is that one of the nest trees that  
8 have been cut down?

9                   A. Yes. That's in the rookery I'm  
10 looking at the nest right there.

11                  Q. This is No. 8.

12                  A. Yeah. There's another nest here.  
13 There's -- matter of fact, I think there's another  
14 nest -- the rookery nests grow pretty close together,  
15 they're not far apart.

16                  Q. Do you find one nest in each tree?

17                  A. Oh, sometimes three, four.

18                  Q. In one tree?

19                  A. In one tree. They're sort of...

20                  Q. This is No. 9.

21                  A. Yeah. This is pretty well what's  
22 left of the rookery.

23                  Q. Are there any nests visible?

24                  A. Yeah, you can see the nests here,  
25 here, and one here, and one here. And I believe if I



1 am not mistaken, these two trees, one here and one over  
2 here, is gone now.

3 Q. Is that one of the trees that have  
4 blown over?

5 A. They have been blown over, yeah.

6 Q. This is No. 10.

7 A. This is the wood that came out of  
8 this area. The rookery was over here, they had a  
9 skidway going in here. This is a winter road going in  
10 here, and here's your wood. And if you look at some of  
11 this wood, it is of very good quality, some of it that  
12 was left behind should have been taken.

13 Q. Is that all poplar?

14 A. Yes, that is all poplar. And go back  
15 to the back one. When I got the letter from the MNR  
16 they stated on the letter that there was an abundance  
17 of conifer trees. Do you see any conifer around this  
18 nest. I believe it's on one of the letters from Mr.  
19 McHale.

20 MR. LINDGREN: Yes. Mr. Kapel is  
21 referring to some of the documents in Appendix E and,  
22 in particular, he's referring to Mr. McHale's letter  
23 dated July 20th, 1988 and in paragraph 2(b) there's a  
24 statement that:

25 "After the harvest, the result is that a

1 heavy residual stand of mixed conifer  
2 hardwood forest remains in the vicinity  
3 of the heron rookery."

4 Q. This is No. 11.

5 A. Yeah, that is the same area, which is  
6 just looking at it at a different angle.

7 Q. This is No. 12.

8 A. Yeah. You can see this is poplar,  
9 it's solid, there isn't a thing wrong with that log,  
10 nothing. Myself I have a good enough experience with  
11 wood that I can tell what's good and what's bad.

12 Q. What's the approximate diameter of  
13 that log that you have your hand on?

14 A. Well, you can see my hand like that.  
15 It would be approximately, at that point be about 16,  
16 18 inches maybe.

17 MS. BLASTORAH: Sorry, Mr. Lindgren,  
18 which photo is that? I'm lost here.

19 MR. LINDGREN: This is photograph No. 12.

20 MS. BLASTORAH: Thank you.

21 MR. LINDGREN: Q. And this is some of  
22 the waste wood that you were describing this morning?

23 A. Yes, yes. This is all in that same,  
24 the rookery right where I'm standing, it would be on  
25 this side of the wood. It's all in the same vicinity I

1 guess.

2 Q. This is No. 13.

3 A. Yeah. This is the aerial spray. As  
4 you see here, this has been sprayed right here from the  
5 shoreline here, and the reason why they say -- like, if  
6 you're out in the lake a mile and a half you can see  
7 the width of the airplane that went through that  
8 sprayed this area right here, and also down here there  
9 is aerial spray about here.

10 And the reason why there is aerial spray  
11 there I can see because I didn't know, on this map we  
12 have here, I can't see in the dark, it shows that the  
13 buffer zone was cut, so the buffer zone is very narrow  
14 and I guess due to the airplane coming along a narrow  
15 buffer zone he sprayed this shoreline too. The only  
16 reason why you can't see this as good as you see this  
17 is there isn't that many deciduous trees there growing.

18 Q. And can you indicate the approximate  
19 location of the park boundary on that photograph?

20 A. The park boundary would be -- well,  
21 here's the cut here roughly. It's hard because that's  
22 not a very dense forest, matter of fact you go to the  
23 end here and if I'm not mistaken it cuts pretty well  
24 across here because this belongs into a 125-acre  
25 reserve that belongs to the historical site of the

1 Hudson Bay fur trading post on Brunswick Lake which has  
2 been reserved for no cutting. So I believe it's about  
3 here someplace, that airplane went over and went  
4 straight lake that.

5 Q. And is that spray drift within the  
6 buffer of the park?

7 A. Oh, definitely. And the reason  
8 why -- this is one of the reasons why I said: Well, do  
9 not spray that, because you haven't got control. They  
10 are playing in such a small area. The whole area, as  
11 you see on the map, is so tiny that it's been sprayed  
12 that it didn't even make any sense to go there in my  
13 estimate, and as far as the competition of what was  
14 there, I don't think it was really that serious to do  
15 anything about it.

16 For the amount of tree plant, it wasn't  
17 that successful really, there's some trees growing, but  
18 not a hundred per cent. It's not a very -- it's not a  
19 very big, big successful plant, I would say.

20 MR. LINDGREN: Madam Chair, that  
21 concludes the slides and I would like to move to the  
22 video machine.

23 We have the screen displayed so that the  
24 Board can see it and Mr. Kapel can see it, and perhaps  
25 the other parties will have to fill in around the sides



1 if they want to view this tape.

2 MADAM CHAIR: Yes, thank you. How many  
3 minutes is the video tape, Mr. Lindgren?

4 MR. LINDGREN: I haven't actually timed  
5 it. I think it's at least 45 minutes and it has been  
6 filed as part of Exhibit 1435, it's the identical tape.

7 MADAM CHAIR: Yes.

8 MR. LINDGREN: And, Madam Chair, I can  
9 indicate that the tape is a little garbled at the  
10 beginning but it clears up, so you'll have to bear with  
11 us.

12 Q. And, Mr. Kapel, this is a video tape  
13 that you took?

14 A. Yes, and my wife.

15 VIDEO PRESENTATION

16 (AUDIO)

17 On this road you can see right before us  
18 there is an area approximately a hundred feet wide that  
19 is made all the way up to the far end over there and  
20 all the way back here, right through from the road here  
21 constantly, and here, up here, right up here, up, up,  
22 up, and it goes for one hell of a distance.

23 As you can see in the background the  
24 forest which is left, what they left they sprayed, it's  
25 all been destroyed. It's not a Chernobyl disaster,

1 it's not a forest fire disaster, it's forest company  
2 disaster, that's what that is.

3 Mind you, we need the trees to grow our  
4 wealth and our cottages in northern Ontario, this type  
5 of system with horrors left behind, it's a wonder  
6 what's going to become of it after the spray, and we  
7 will show you some of the trees that are ten years old  
8 if it's really worth all that, or maybe sometimes it's  
9 easier to protect what's there already.

10 The place has been sprayed and I'm going  
11 to try and look for a tree, and this tree plant here,  
12 these trees are approximately - some of them, not the  
13 large ones, them are the ones that were left behind and  
14 weren't cut, thank God - and down below here in the  
15 forest between all this crap we might just might be  
16 able to find a tree that was ten years old that was  
17 planted here.

18 We will just hang on here. For some of  
19 them trees are planted, Mother Nature left some here  
20 and there, but the ones that have been planted that the  
21 taxpayers paid for, we're still trying to find them.  
22 We'll find them, they're here someplace.

23 As you can see up on the hill there  
24 there's a few trees that were planted. They're ten  
25 years old and there's the tall trees that they have

1 left. These trees have been sprayed by, fell down,  
2 wait I will show you an area there, when these trees do  
3 fall down how much they destroy them conifer trees.

4 There is no trees whatsoever been planted  
5 and this is supposed to have been a plantation. The  
6 only place we'll probably find a good place where the  
7 trees are planted is an area where somebody drove to  
8 and planted trees, but this just about looks like the  
9 Sahara Desert; doesn't it. You know, that's what spray  
10 did.

11 It even looks like Africa, but one thing  
12 is different between Africa and northern Ontario, we've  
13 got no elephants here, we've got giant forest people  
14 who destruct our land and make all this thing look so  
15 devastated, instead of supposed to been planted in this  
16 area that the Ministry says was an excellent plant, it  
17 survived very well, and we're still looking for it but  
18 we still can't find them. Find an awful lot of dead  
19 brush, but there's no trees around.

20 There's the odd one left that grew very  
21 well after not being cut, but we're still looking.  
22 This is an area that was sprayed few years back for  
23 conifer trees and we can't find any. I mean, what is  
24 the theory behind all this.

25 There is approximately ten years old to

1 11 years old what was cut. As you can see the  
2 productive rate is not very successful, but the  
3 Ministry says it was an excellent plant. Well, with  
4 this kind of tree planting I don't know where the hell  
5 we're going to find trees in 50 or 75 years from now,  
6 cause I can't find any.

7 Oh, my wife said she found one. We're  
8 going to go look. Well, just hang on. All right. We  
9 have come across a few trees here...(inaudible)...  
10 sequence, looked like man put them there, as you can  
11 see the rows. They're here, they're there, not too  
12 uniform, but there's a few here and there.

13 Yeah, there's a couple there. Oh,  
14 there's four, five six, seven. My God, this is going  
15 to create one hell of a big forest when it does come  
16 through. It was planted along here and there, and here  
17 we go eight to ten -- oh, approximately ten years ago  
18 and there's Lyn standing beside one of them, that's ten  
19 years old, there's another one that's ten years old,  
20 there's another one, there's another one.

21 But as we go down here you will see these  
22 trees, these here trees as you go down, down this road,  
23 look down this road, going down and look down this road  
24 down here and there is actually nothing left out there.  
25 I guess the fellow must have ran out of trees or the



1 terrain got too rough or the trees must have been paid  
2 for already.

3 So we'll take you to -- there's quite a  
4 few I guess. This one has approximately four trees  
5 planted together, and any more of them. Down there,  
6 there are four trees planted in that one, two big ones  
7 together there, yeah. And this is just in an area  
8 approximately, oh, I would say 20 feet square where you  
9 have noticed all these trees have been like this, you  
10 know, but it's a great plant. That's the end of the  
11 plant right there.

12 They fell down after it was destroyed by  
13 spray, and underneath this tree along a little ways a  
14 few seedlings. It seems to me that every one of these  
15 monster trees that fall down take a good toll of young  
16 trees with them.

17 Here we'll show you the tree plant here,  
18 through here. As you can see trees are planted. Go  
19 stand beside that one, move over there, ten to 11 years  
20 ago, and it's called a successful tree plant, as you  
21 can see and that's it, but as you see down there in the  
22 yonder, in the hole there, there's a few trees that  
23 were put in there by nature that were left and weren't  
24 very big, but they're sure growing and they sure look  
25 healthy. So it just goes to show you, if you're going

1 to protect what's left behind, nature's very  
2 forgivable, but if you're are going to do this, nature  
3 is just not too forgivable.

4 Miles and miles of rows like this, you  
5 know, miles of it, miles and miles. As you can see the  
6 extra road made on the side here, on this side here,  
7 was a winter road made by Spruce Falls years ago when  
8 it destroyed all the trees. Over here you can see the  
9 part of the road that was widened to create a winter  
10 road, it wasn't done by snow removal, it was done in  
11 the fall of the year, early part of the year right  
12 through here, and all the trees were planted along here  
13 they're all buried in there. Approximately seven to  
14 eight kilometres and the Ministry is not concerned  
15 about it because they say the plant back here is  
16 satisfactory.

17 So we seen the plant awhile ago, so if  
18 that's what the Ministry calls satisfactory, well I  
19 don't know.

20 As you can see, not too much growing.  
21 There's another problem here too after the forest  
22 company leaves, they left us with this monstrosity  
23 erosion all over the country here. I mean, erosion  
24 that's hard to believe and after they're gone, look.  
25 I'm looking for somebody down there and they're way

1 down there someplace in this pit of erosion. Hello.  
2 Where are you? Oh, you're in the hole. Well, wave  
3 your hand down there. Well, that's erosion. That's  
4 created the banks up there. Thank God they didn't  
5 spray these trees here along this erosion because it  
6 would be twice as bad.

7 See this area has been all harvested out,  
8 there's nothing left here. Where are you? Oh, you're  
9 down there. Oh, yeah, I see you. Okay. Oh my God.  
10 Yeah, it's an awful hole. Opposite side of the road  
11 it's been all eroded right through, right through for  
12 miles. There is many areas like this, many, many areas  
13 like this. Now all that's left -- the place is left,  
14 they figure nature is going to take care of this, but I  
15 can't see how.

16 Here's beautiful Brunswick -- here's the  
17 creek that goes called the Berry Creek, and as you can  
18 see a nice peaceful...(inaudible)...in the river which  
19 flows into Brunswick Lake. As we look on the shoreline  
20 not too bad they left some trees, a buffer zone, it  
21 still does look good, but here as we go downstream a  
22 little way cut across, a crossing here, and a bunch of  
23 debris, here's a trench washed right out with silt,  
24 just washed all into the stream here because of a  
25 river -- a creek crossing here. On both sides the

1 same, as you can see. This side is not too bad, but  
2 then as you go up it was washed down into the stream  
3 here and behind these trees here and came out behind  
4 there.

5 They tried to stop it but the water is  
6 still seeps going down and it still creates a big  
7 problem to the stream here, flowing -- man-made stream  
8 that brings all the clay and the silt and this has been  
9 going on for about five, six years and flows right into  
10 the river bed.

11 I think this Doherty Creek place right  
12 here there was about four feet of water, I don't think  
13 you can see now, but you can practically walk across it  
14 there's so much silt in the stream here at this  
15 particular spot.

16 And the pillars are all broken underneath  
17 it, it's all rotted on one side, it's a hazard to the  
18 public, no warning signs, no nothing, falling down, all  
19 eroded. They left it here figuring nature would take  
20 its course, but with this kind of disaster this bridge  
21 is eventually going to fall into the stream make it  
22 harder for fish to go up to spawn. Only one problem  
23 about this, it's going on now for two years repairing,  
24 no charges have been laid and why not? For if I did it  
25 or you did it, we would pay for it.



1                   And that healthy heron rookery that the  
2   Ministry claims they have protected so much, this is  
3   some of the area that we have to go through and trees  
4   that you will see are left behind and cut, and there  
5   was no sign of conifer trees and the rookery is  
6   approximately in this area back here, back of these few  
7   poplars that are left. So we'll have a jog down there,  
8   but first we'll stop on the way and show you a few  
9   fantastic tree plantations I was talking about a while  
10 ago.

11                   Right there, and if we look up further we  
12 just might be able to find another one maybe, maybe.  
13 There's one there. Oh, I think there's a little one  
14 possibly right behind that one down there, no. In this  
15 little area just between the heron rookery we counted  
16 about ninety trees that have been planted in all this  
17 vast area that's supposed to be all tree planted and  
18 that they want to spray so desirably. I don't know if  
19 it's to prove a point, or there's no reason or logic to  
20 this at all.

21                   So we're going to go to the rookery and  
22 have a real good look at what the Ministry says, what  
23 they call a healthy rookery, but you can see quite a  
24 few of the trees are missing, there's no conifer, what  
25 conifer there are, they're dead from budworm and the

1 rest is just about all the poplar going down, so we'll  
2 have a look at that and we'll show you -- oh, there's  
3 one with the top broke off from the wind. We're just  
4 going to go in there and show you what they did. We  
5 look at what's in there now, maybe we'll just look up  
6 some of these trees here and have a look to see if we  
7 can see any of these nests around here.

8                   Where are these? (inaudible) There's one  
9 right there, see it right there, and as you can see,  
10 all the trees behind them are gone. So we're going to  
11 go in a little closer and have a real look. As you can  
12 see it's a well protected rookery. Oh, there's another  
13 one there, where is it, oh yeah, yeah. Look around  
14 this place here find some more, there's some more trees  
15 that they dropped, there's another one that they cut.  
16 This is what the Ministry considers a protected  
17 rookery. It's still protected.

18                   Look around the ground here and maybe  
19 we'll go a little further and look at the trees, the  
20 forest is starting to get a little thinner. These  
21 trees you see in front of us have no nests, it's the  
22 ones behind that have. Let's go a little further on.

23                   In the middle of the rookery you can see  
24 already the damage the wind is doing and by next year  
25 quite a few more of these will disappear, one after the

1 other, and then we'll see if we can find a few nests up  
2 here, around here.

3 A nest right there, and there isn't much  
4 trees left to protect that nest. As you can see, the  
5 wind is already doing a number on some of these trees.

6 Well then, we look at the bottom of this tree see what  
7 kind of nest there was at the bottom of it, you know,  
8 we're in the rookery right now. You know, we are look  
9 at the top here and see if we can see a few more of  
10 these nests around. At one time there was a few more  
11 nests than these, but now we'll have a look on the  
12 ground to see how many really survived or will survive  
13 from year to year. In the middle, in this heavy thick  
14 place of tall poplar, trees that these heron and this  
15 conifer -- matter of fact, if we look closely we just  
16 might find one conifer tree in the whole works and it  
17 is standing all by itself, left when all the other  
18 conifers are cut all around it.

19 We'll show you the stumps after. Next to  
20 that conifer it's protecting this nest birds here, see  
21 them, you can see them all there. Well, that's what  
22 the Ministry calls good protection. Windfall we'll  
23 show you a different angle, a freshly fallen tree, not  
24 really fresh but fallen down because due to wind no  
25 protection from trees.

1                   We'll go down here and look at the bottom  
2 of the tree here. Further on we'll have a look to see  
3 what all this mess is all about here. We're moving in  
4 a little closer here, holy geez, an awful mess anyways.  
5 There's the tree but I can't find you Mom.

6                   You can't find me.

7                   There you go. There's one nest right in  
8 there that fell down as you can see, it's hard to see,  
9 and that's one of the well protected nests, yes. We'll  
10 go on further and show you a little more. As you can  
11 see all these trees around us we're supposed to have to  
12 protect these birds are far and few between.

13                  Conifer, well there is no conifer. As  
14 you can see it's been all cut out and I can probably  
15 believe that the wind will take an awful toll from this  
16 area. There's stumps all over you can see that were  
17 cut, that were supposed to not be cut. You know, these  
18 are stumps of poplar, aspen which these birds use for  
19 nesting only.

20                  We'll look at another tree that has been  
21 cut. Now, we're going to go look at the end of it  
22 because I believe there's a few nests here in this  
23 particular tree. There was one nest there. We have to  
24 look further on in the jungle, there's another nest  
25 there. This tree here, it was cut and left with the



1 rest. If it had been cut, no doubt if you went and  
2 looked at the end there's probably a nest. It's  
3 supposed to be well protected. Lots a room around them  
4 but no, still yet to see any more conifer trees. You  
5 know, there's one that wind tolled already, a lot of  
6 these other ones are going to receive the same thing  
7 within a year because that's all the trees that are  
8 left.

9 Very few, quite a few on stump. There's  
10 dozens of stumps this size had nests on them, some we  
11 showed you. We couldn't possibly show you them all,  
12 and it was cut and we'll just go and look down the far  
13 end there and see if there's any nests on it that were  
14 left, that the Ministry says that are so well  
15 protected.

16 First of all, we'll go back into this  
17 area here and have a look there. Well, you can see --  
18 have a little peak at this rookery what kind of  
19 protection it has from the wind which is very little  
20 left, as you can see. That part there is no rookery  
21 and this part here, there is all the rookery. So it  
22 has a nest on the end. We'll go and have a look.

23 We're going to follow it down here, down  
24 here, and we're going to have a look here in this  
25 little hole here. If we look down in here we find the

1 remains of a nest. One of them other well protected .  
2 nests. My God the Ministry knows what they're doing.

3 There's a tree that was cut down for a  
4 block of wood at the end and at the top had two heron  
5 nests in it. Again, they call that protection, call  
6 the well protected rookery. As you can see, one  
7 conifer tree and the rest -- well, that's it, that's  
8 it.

9 From a tree that was cut, aspen, in the  
10 same area, was cut, and if we go up here, up here, up  
11 here, up here, up here, and there we have another nest  
12 right there. What the hell, this is a tree that has  
13 been demolished. Just in the few trees we've seen  
14 already, that we looked at, practically every one has a  
15 nest or two in it.

16 Another tree, ain't got much protection  
17 either left around. All the conifer have been cut  
18 around. No, no, no. I don't know what the Ministry  
19 calls conifer. There's a cedar tree, but it's very  
20 very small, it's not much protection at all. See out  
21 there it's wide open and probably this winter these  
22 coming years the wind will take toll on these trees now  
23 because they're exposed and they have no more  
24 protection. Well, it's not right.

25 In the area where the tree plant is

1 supposed to be we're going to look to see if we can  
2 find some trees here that were planted, and the only  
3 one that we have come across in this particular area  
4 was half a dozen down the road there, around here  
5 there's none, there's none at all. This is an area  
6 they want to spray to protect the plantation. Now, how  
7 do you justify this? God, why look at this, look at  
8 all the wood that's left behind. There's solid,  
9 there's some solid trees here, look at that. Look,  
10 just left. You know, this is some of the wood was  
11 pulled out from the rookery place there and just left  
12 there to rot, you know, I guess they just didn't want  
13 it, so that was it.

14 We have a large abundance of osprey and  
15 as you can see, out goes his prey and away he's gone.  
16 Very lot of aquatic animals and birds in this  
17 particular area which makes it an ideal spot for those  
18 types of birds, but it seems to be an ideal spot for  
19 the Ministry to spray. So these birds have no  
20 protection in this vast area here and I don't know  
21 what's going to become of it, but as you can see it's a  
22 very beautiful aquatic place.

23 Eagles, we're just opposite the other  
24 side from the blue herons were, it looks as though the  
25 eagle was here, here someplace amongst the tree.

1       There's one. Keep looking. He's been sitting on the  
2       edge of the nest there. The bottom of that tree, yeah,  
3       see that big dry tree there, head straight for it,  
4       there's a bald eagle on top of the tree.

5               Yeah, straight ahead, straight ahead,  
6       straight ahead, still sitting there in the tree right  
7       there, (inaudible). Now, these are eagles of the lake,  
8       these are eagles of Brunswick Lake.

9               I'll show you the back part of this  
10       beautiful peninsula with all the aquatic. You see back  
11       here we go further in, that clump of trees back there  
12       is where the eagles have their nest a little ways back  
13       there, and it's all beautiful aquatic. This is what  
14       you call the mouth of Doherty Creek where it flows into  
15       the Brunswick River. We're approximately -- Brunswick  
16       Lake is back in there, and you can always see Brunswick  
17       Lake right over there.

18               We're approximately two miles from the  
19       bridge that has the washout and the silt comes this  
20       far, oh at least -- no, we're more than two miles,  
21       we're at least three miles away, at least, so...

22               The only thing is that I'm a piss poor  
23       photographer, but this is my first time.

24               (inaudible) by the Ministry on this  
25       peninsula where we have this heron rookery and the



1 place where they want to spray, but we're going to have  
2 a look here what kind of mess they left here, it's just  
3 a disaster. Well, we're going to see all this.

4 There's bags all over the place here. You know, you  
5 practice to keep our forests clean but where are we  
6 here, where's bag, did you get it Mom. Who's  
7 responsible for all this. By crackety, you know, let's  
8 see what we have here.

9 My God, the Right Honorable Minister of  
10 Natural Resources, Vince Kerrio, and he left all; this  
11 garbage here. This is terrible, this is really  
12 terrible. We'll have a little look around here a  
13 little further and see what other stuff we got left  
14 here.

15 Oh, this is to add up to our beautiful  
16 environment. You see, the problem is here is people  
17 don't see this, where it's far and isolated, they just  
18 throw everything like if it -- as nobody else existed  
19 in the world and how are we going to keep our land and  
20 our lakes clean with this type of system of management.  
21 These are one of the efficient things that our Ministry  
22 does.

23 A winter cache where they kept all their  
24 trees for the winter, but after what trees are planted  
25 they just throw everything away. It's just like that.

1 They got the nerve to go around and telling people to  
2 pick up their garbage. Well, look at this, isn't this  
3 a disaster, this is ridiculous. You know, I have never  
4 seen anything like that in my life and get away with.

5 There we go, a little farther, look at  
6 this. Here's an area designated for aerial spraying.  
7 This is the area where the bald eagles are in the same  
8 area and where the blue herons are. This is in the  
9 middle of the peninsula.

10 As you can see, there isn't very much  
11 growing, what's left and it is due for spray, aerial  
12 spray. This is a well protected rookery area. The  
13 Ministry said they had made a barrier around it, was  
14 supposed to be over there will be the rookery and them  
15 trees there we'll go and have a look. First we'll just  
16 look around here to see what they actually did here in  
17 this area here. So we'll go on there and we'll have a  
18 look further on.

19 A winter road that was made right towards  
20 this area where the rookery is here, right down here,  
21 and we'll look over here and just off the side of this  
22 road, the forest over there. Within approximately  
23 maybe 20 feet from this winter road there are a few  
24 nests laying on the ground which we'll go and have a  
25 peak at there. Once we get closer we'll be able to see

1 more.

2 We're beside the winter road here that we  
3 talked of and to the side of this road you will see all  
4 the debris of trees here, trees that were left behind.  
5 Look, around here; look, some more here. And this type  
6 of operation that was carried out here was called --  
7 the Ministry called this high grading the wood, you  
8 know, just take the best and go I guess, and still  
9 leave some of the good stuff, but do a lot of damage.  
10 Here, we look around here, there's the bottom of the  
11 rookery there, and -- right, okay.

12 Other side of the road. In this area,  
13 this is where the rookery stand, part of it stood, and  
14 as you'll see back in here, back in the bush here,  
15 where it's all been taken out, there you go.

16 Wave your hand. Way back there a hand is  
17 waving there. There's two nests right there on the  
18 ground which is about maybe -- Oh, I would say 75 feet  
19 from the road, right there. Yeah, yeah.

20 So we'll have a look there to see what  
21 really it is, okay. Here's one nest right there that  
22 fell down. As you can see the tree that it was on was  
23 cut and left, and as you go down there you'll see just  
24 a piece of the end was cut off, and hard to believe if  
25 they did take it, some of that wood they left on the

1 road.

2 We'll go into this tree further, we'll  
3 look to see, there's another nest, right there, that  
4 has been destroyed and this is what the Ministry calls  
5 a well protected rookery, a productive rookery --  
6 excuse me, productive rookery.

7 Standing in the middle of this rookery  
8 here and we'll have a look up here to see -- very messy  
9 around here. One up there, yeah. I believe there's  
10 one in there, very difficult to see. That's just one  
11 tree. And as you can see, there's the protection the  
12 Ministry said they left behind, very little.  
13 As you can see already the first season has passed and  
14 the wind has destroyed this tree already.

15 Yeah. Now, we'll have a good look at  
16 this. Oh, down here among these trees here we'll look  
17 around a tree that fell down in here and, what do we  
18 have right here; we have a nest right there: One,  
19 another one, another nest right there, they have ruined  
20 this here, mess again here.

21 And we look way down in here and we have  
22 another nest down in here, right there. And we look  
23 over here, further, and there's one down in there too,  
24 right in there. By the way, these are supposed to be  
25 productive, that's what I was told. Must be new kind



1 of birds. Here's another nest, as you can see, fell  
2 down from this tree here. Yeah, there she is.

3 Here's another one?

4 Down there, another one. You see this,  
5 that is a few of the nests there in that tree. As you  
6 can see these two trees were left and they will be  
7 endangered by the wind or one day a storm will come and  
8 remove what's left. They have no protection  
9 whatsoever. That's just a few of them.

10 Here's some more, down here in this tree  
11 here, you see, and we step aside here, the tree,  
12 right next to it here in that tree there that was  
13 standing beside that one we just showed you has  
14 approximately three nests in it. So we're going to go  
15 over there and have a look. The rookery, right in the  
16 middle, here's one large stump as you can see. And now  
17 just past this one and everything there's another  
18 stump. They're all over the place. The whole middle  
19 of the rookery has been all cut out. I don't know --  
20 can't see no markers, no ribbons, no sign of anything  
21 within a good ways around here. How would this place  
22 be marked as protected area.

23 As you can see down over there, we just  
24 went by that dead tree there, and over there that the  
25 wind knocked down and the road was right there, and

1 we're right here, in the middle of the rookery. It's a  
2 wonder they didn't make the road right down the middle,  
3 they missed it by about 75 feet.

4 Maybe we'll have a look over here a  
5 little bit and we'll see here we have another big aspen  
6 cut here, and now there's an aspen here, we're going to  
7 look down here, over here, and all this is knocked down  
8 as you can see. That was the tree we showed you awhile  
9 ago that was right underneath the few nests, right  
10 there. There ain't much protection left for those  
11 trees, but the Ministry says they left a lot of  
12 conifer, a lot of trees. We haven't come across a  
13 conifer yet, have we?

14 Oh maybe there's one there, but it's dead  
15 too, partially dead. I guess it wasn't big enough to  
16 high grade so that's all they left. Oh, look around  
17 here, to the left, a few more nests, and here's another  
18 one, another one, there's some more nests there.  
19 There's two there.

20 We'll have a long look up here, cuts with  
21 a block of wood at the end. At the end of this tree  
22 here in this mess we have here there's approximately  
23 three to four nests, so we'll go over there and have a  
24 look. On the tree here you can see in there, there's  
25 one nest in there, and over here...(inaudible)...of

1     this debris, there's another nest right there, knocked  
2     down, and it's hard to believe that a person from the  
3     Ministry of Natural Resources would sign a letter  
4     saying that this rookery was a very productive rookery,  
5     it was well protected, when the cut was here. It's  
6     unbelievable, people like that don't know what it's all  
7     about. And to be working for us, the people, it's not  
8     right, something wrong someplace.

9             There's a nest right there. We'll cross  
10    a tree right here, a little further and I believe we  
11    have another nest in here, right there, right there,  
12    and we'll go over a little bit here, there's some more  
13    garbage and just follow up, follow a little more there  
14    and oh, there's a big aspenella, so we'll just climb  
15    this aspen up and up and up and up and up, we'll see  
16    where we're going to go here.

17            We're still on the same tree and right at  
18    the top, what do we have, a blue heron nest. One in  
19    the tree, way down on this tree, we're on the same  
20    tree, we'll look at it, down there and over here,  
21    there's the nest, the one, and over here there's a nest  
22    of another one. There's some more right there, there  
23    it is, right in there. A stump here, that was cut  
24    right in the middle of the rookery, yes.

25            Over here, and go over here we look and

1 down in this mess there's another nest down in that  
2 rubble down there. Very difficult to see but it's  
3 hidden under there. Just below that nest we looked  
4 awhile ago there, we were looking at, we'll go up here  
5 have a gander and you'll see way, way up there and this  
6 looks like a target for a big wind storm this one.  
7 Way, way, way up there, well that's a beautiful nest  
8 that one. And we'll look around all these trees and,  
9 oh, there's one, not much protection left for that one.  
10 There's another one, there's more.

11 A few weeks ago I spoke to a biologist  
12 and he told me a few miles from here there's another  
13 lake that has a rookery like this, it's declining very  
14 badly. He says they don't know what the reason is.  
15 Well, matters like this don't help, maybe those birds  
16 from that area came to here to populate together, you  
17 know, birds are like people, they like to go to the  
18 city and I guess maybe just don't give them a rest  
19 anywhere, had to take them out of here too. Well, at  
20 this rate we won't have any left, you know.

21 As you can see they're left very barren,  
22 all the forest just about, they have no protection here  
23 whatsoever. You know, very low. We're just looking  
24 around here, one -- oh, there's some right there. Just  
25 give you an idea of what protection these birds have



1 left in this area, not very much. No, the rookery  
2 hasn't got a very long life. There's some more, ain't  
3 got much protection left. There's a rookery here. You  
4 can see all the trees have been taken right out. Just  
5 about in the middle of it, actually the only nests were  
6 left were just the ones that were around on the  
7 perimeter, just the trees that weren't really good, you  
8 know.

9 Let me look under here. Here's one here,  
10 and one there. We'll go over here. There's one up  
11 there somewhere, the rest -- well, we're going to go  
12 down over here. We have down in here there's some more  
13 trees, we will show you it, some more nests on the  
14 ground. As you can see the nests right there, there's  
15 two of them; one in there and I believe one up there.  
16 There used to be another one between them but we'll  
17 have a look where he is now.

18 Come down here, someplace here. We'll  
19 have to have a look on the ground, and we're going to  
20 go over here and have a peak-a-boo over here. Somebody  
21 chopped this big tree down here and just took a piece  
22 out of it, and over here some of this piece here --  
23 where are we here. We'll have a look around here, in  
24 this hollow here you can see a nest here, sort of like.  
25 We'll have to get a little closer.

1 Right down between the trees, down there,  
2 there's a nest there. We'll find it here, it's not too  
3 good. Movie man here, I can hardly stand up, hang on.  
4 There it is, there's a nest in there, of this gigantic  
5 tree they chopped, and if we look way down under here,  
6 under all these remains down here, there's a few more  
7 nests, but I guess they're history.

8 Some of what you call Ministry of Natural  
9 Resources work. The latest I heard they're going to  
10 put video cameras in the forest so the people can watch  
11 the forest from the office, because they seem to spend  
12 most of the time in the office anyway. So that's on  
13 the next budget I hear.

14 There's another, there's another, another  
15 nest. God, that nest don't look to healthy, does it.  
16 The Ministry tells me that these nests have been  
17 knocked down, now these birds are let go and have to  
18 settle someplace but they don't know where they are.  
19 So that's a funny answer, you don't know if you're  
20 having any or not, you know, it's hard to say what they  
21 might think about this. God, if they can only talk  
22 they'd probably tell us some few words.

23 Let's see what we've got here. We see  
24 this tree here, it's right in the middle of the rookery  
25 here and you can see there, a nest right in that tree

1 and we have one up there, and if you look around we'll  
2 probably see a few more here and there. We have to  
3 look here, we look in there. Oh, we're going to come  
4 back down here slowly and this tree here, this is an  
5 awful size tree and they just took one piece off of it  
6 the rest they left. They call this high grading the  
7 forest, and meanwhile we'll have to pay for all this  
8 mess.

9 We'll look down here where they cut this  
10 tree, even a little further down here, and by golly  
11 what do we find right there, down in here to our  
12 surprise, there it is, yeah, it used to be a blue heron  
13 nest but obviously when they're up in the trees they  
14 are not productive according to the Ministry because  
15 when they're on the ground you call this productive. I  
16 don't know where they see their logic to that. I don't  
17 know, got some pretty funny people working there, I  
18 don't know. I think we better get this department  
19 assessed and maybe have to show these people and tell  
20 these people what they're working with and how to work  
21 with, you know, because I doubt very much if they're  
22 qualified, you know.

23 In all this rookery and you look down the  
24 road, down here, where you can see the road right  
25 there, forest road just a few feet away, and just up

1 this road here a little ways around the corner what you  
2 see at the beginning of the film was all the waste that  
3 the Minister left. God, he even left his name on the  
4 bags, you know. They preach to keep our clean  
5 environment and forest but the Ministry seems to be the  
6 worst culprit of all, you know, plus we have to pay for  
7 that. It's a shame.

8 Back on the road looking at the rookery  
9 just one corner of it, one side of it, and we're going  
10 to go right across here and we're going to show you  
11 what the Ministry calls a heavy residue of conifer and  
12 hardwoods that they left behind to protect this  
13 rookery. What did I miss.

14 Move back here, by crackey there's one  
15 there, and this is heavy residue of conifer. The only  
16 conifer trees that are left there are the dead ones,  
17 they're going to fall down and knock the other ones  
18 down. As you can see way out there, we'll take a long  
19 view of the well protected rookery.

20 and I hope that film you're getting is  
21 going to be a lot of help because that's the best I can  
22 do, I'm not a very good photographer, but it's a pretty  
23 rough place to take, you know. It's too bad we have to  
24 go through all this for this type of, you know, mess  
25 that has to be done, but I hope there's some people in



1       there that will understand and help us and maybe  
2       realize what's going on because we can harvest our  
3       forest and do everything we can out here with a little  
4       bit of care and everyone get along, but with this kind  
5       of monstrosity going around like only one person lives  
6       in this part of the country, it's not very good for us  
7       all. It's not very good for our birds, our wildlife,  
8       and I think we can all work in harmony, but the  
9       Ministry of Natural Resources is going to have to  
10      straighten their act, going to have to start listening  
11      to people.

12                   I have tried for years to talk to these  
13      people, tried to do everything, I have met with them, I  
14      have went with my own time, they will just ignore you,  
15      they just don't want to -- they figure they know  
16      everything, but nobody's perfect and I hope you people  
17      over there in Toronto at the Queen's Park have a good  
18      look at this, and if they want anymore, there's umpteen  
19      things that I can give you, but two wrongs don't make a  
20      right. So that's it, Don.

21                   MR. LINDGREN: Q. So just to finish with  
22      the video, Mr. Kapel --

23                   A. I have to apologize for the  
24      photography, it's the first time I had a camera.

25                   MR. LINDGREN: And, Madam Chair, I can

1 indicate that the specific location for the video  
2 tapping are set out in OFIA Question No. 1, there's a  
3 map that's attached, and there's an indication where  
4 some of the video taping took place.

5 Q. And Mr. Kapel, did you take the  
6 videotape on the dates indicated on the film?

7 A. Yes.

8 Q. Okay. And can you briefly advise the  
9 Board why you felt it was necessary to take a videotape  
10 of that?

11 A. Why? Because when I spoke out nobody  
12 would believe me. I figure the only way you can get  
13 somebody to believe you if you put it on tape, on a  
14 film.

15 Q. Do you have any other final comments  
16 you wanted to make on the film or what was in it?

17 A. Yeah. I was mentioning lots about  
18 spray. There was another an article I want to say here  
19 is that Custom Sawmill on May the 2nd, 1990 sent me a  
20 letter registered saying an aerial spray would be done  
21 in my area. They sent me a map putting my -- what is  
22 so funny about it, they sent me a map attached to this  
23 copy of where my lodge was, my lodge does not exist  
24 there.

25 Q. Now, you're referring to Appendix C?

1 A. Appendix C.

2 Q. And on the flip side of Appendix C  
3 there's --

4 A. Copy of a map.

5 Q. A copy of a map and there's  
6 handwriting that says, your property, and there's  
7 somebody else's hand writing that says, this is not my  
8 property.

9 A. That's not my property. I'm on the  
10 other end of the lake.

11 Q. So your property has been  
12 misidentified in this public document?

13 A. Yeah, and they're going to do an  
14 aerial spray.

15 Q. Do you have any other comments on the  
16 videotape?

17 A. I didn't expect it to be like that.

18 MR. LINDGREN: Madam Chair, I do have my  
19 two final questions. I don't know if I should put them  
20 now or should we take a break?

21 MADAM CHAIR: Why don't we take our  
22 afternoon break now, Mr. Kapel, and we'll be back in 20  
23 minutes.

24 Thank you.

25 MR. LINDGREN: Thank you, Madam Chair.

1 ---Recess taken at 2:55p.m.

2 ---On resuming at 3:20 p.m.

3 MADAM CHAIR: Please be seated.

4 MR. LINDGREN: Thank you, Madam Chair and  
5 Mr. Martel. Two final questions.

6 Q. The first relates to paragraph 23 of  
7 your witness statement and there we find a statement  
8 that:

9 "We are dissatisfied with the timber  
10 management planning process because the  
11 MNR does not appear to be willing to  
12 accept or act upon public input. In our  
13 experience the open houses have been a  
14 waste of time since MNR staff seem to be  
15 on the side of Industry and appear to  
16 have already made up their mind about the  
17 proposed activities."

18 Can you explain those comments to the  
19 Board, please?

20 A. Well, after what we have done today,  
21 this afternoon, you can see that all the things I put,  
22 or the video and things I have mentioned of interest  
23 were not taken into interest, and this is why I say  
24 these public meetings are not worth nothing, because I  
25 went to meetings with the MNR, I drove 300 miles, you



1 sat there, I've expressed the problems I have, no  
2 minutes of any meeting were taken down. I was told  
3 that if wildlife didn't like it, they'd have to move.  
4 So this is why I say these meetings are a waste of  
5 time. Any meeting is a waste of time if nobody wants  
6 to listen.

7 Q. And in your experience have the open  
8 houses been well attended?

9 A. Well, in the experience I have, the  
10 few I went to in the Timmins district, we go all the  
11 time. You go knowing that we're in the sawmill  
12 district, we always ask, you know: Is there anything  
13 in there for us in milling because we're always looking  
14 for wood, and there's never anything for us.

15 And attendance that we have went to, we  
16 went to one I recall and I think we were there for 15  
17 minutes before closing and we were the only two people  
18 that attended. That was in Timmins. This goes back  
19 quite a few years ago. We used to attend quite a few  
20 of them. We find even the public have lost interest.  
21 You take surveys, you ask people about MNR, they say:  
22 Well, they've made up their mind already, there's no  
23 use going to a meeting, so...

24 Q. And my final question actually comes  
25 from Madam Chair. During the scoping session for this

1 evidence the Board was interested in your comment,  
2 again in paragraph 23, that:

3 "As a sawmill operator I'm concerned  
4 about MNR's licence decisions that have  
5 caused difficulty in my operation."

6 And on behalf of Madam Chair, I'm putting  
7 my question to you. What types of problems have you  
8 experienced as a result of MNR licensing or allocation  
9 decisions?

10 A. Well, first of all, I will tell  
11 you -- like, I will tell you the life history of our  
12 sawmill. When we started this mill it started off as a  
13 hobby. We're into our third sawmill route now.

14 And I was planting trees one time, and  
15 this is what I told you a while back, that I did a  
16 contract of tree plant and I had hired this little  
17 student, he was about 10, 12 years old, and he said to  
18 me -- he was planting trees with me, he said: Sir, he  
19 says, why are we planting any trees? I said: Well,  
20 for your future, son. Well, he said, sir, look at all  
21 them big trees laying down on the ground there and I'm  
22 planting trees. So that is what drewed my attention.  
23 Right away I says to myself, this fellow, he's pretty  
24 sharp. So in that same area they were building a new  
25 logging road through a gravel esker.

1                   Abitibi Price, if it was Abitibi at that  
2     time, I believe that was building the road and they  
3     took the timber. I have some pictures, I hope the  
4     Board will believe me, and the logs that they had, they  
5     buried them in the road to make a road and after seeing  
6     -- this I went and acquired a skidder and I pulled these  
7     logs out of the road and I piled them all up, and I  
8     can't remember how many cunits I had of wood at that  
9     time. Then the MNR came to me and told me that I  
10    couldn't do that. And I said: Well, you mean to tell  
11    me I'm going to pay you to plant trees and you're going  
12    to take red pine, jack pine, 12, 14, 20 inches at the  
13    butt and bury them in the road to make a road with  
14    that, meanwhile these are economical trees.

15                  So I pulled all these trees out, I  
16    brought them all home and made a sawmill. And the  
17    first load, we manufactured a load of pallets, from the  
18    first load of pallets we shipped the costs were equal  
19    out of the scrap that was buried in the road and that  
20    is how we start. And my son -- this is an old saying,  
21    if you're in the sawmill business you get sawdust in  
22    your blood, it's pretty hard to get rid of. So my son  
23    finished his elementary school, his high school, he was  
24 - interested in sawmilling.

25                  So then we had it as hobby more or less,

1 then we went into full-scale operation which we operate  
2 just a family business right now. Since that time we  
3 have had a very, very difficult time acquiring wood.  
4 We have no standing inventory.

5 We have all kinds of customers that call  
6 us in the area. I live -- it's a mining community,  
7 there is never anything allocated for the mining  
8 industry and you speak to MNR people, you tell them you  
9 need material for mining, you start explaining what  
10 kind of timber you need and what's the name of these  
11 products the mines use, they just -- they don't know  
12 what they're even talking about. They just know it's  
13 got to be either 2 by 4s or pulpwood, and this I find  
14 is very bad because our young people today in northern  
15 Ontario have a very hard time staying there because  
16 there's actually not too much for them, and by giving  
17 away all our forestry to these large companies doesn't  
18 leave much opening for our young people.

19 And I thought all this forest management  
20 planning, planting of the trees is for our young  
21 people, but obviously it doesn't work that way. And  
22 the Ministry obviously wants to eliminate small  
23 business. If they don't, I don't know why they give us  
24 so much difficulty to acquire wood. We even tried to  
25 be so good and ask to go and we even horse logged in



1 sensitive areas, tried to get some wood to keep  
2 operating and try to have a stock because the business  
3 is out there, there is no problem.

4 Right now, thanks to E.B. Eddy Forest  
5 Products, which was one company that listens to us, and  
6 if we're stuck it helps us. Another one at present  
7 right now is Martel Lumber. I don't know if you own  
8 it.

9 MR. CASSIDY: It's Mr. Yvan Martel who is  
10 in Chapleau.

11 THE WITNESS: Elie Martel?

12 MR. CASSIDY: No, no, not Elie Martel.

13 THE WITNESS: Martel out of Chapleau,  
14 they had a forest fire --

15 MR. CASSIDY: I don't believe he's any  
16 relation to Mr. Martel.

17 MR. MARTEL: No relation.

18 THE WITNESS: They had a forest fire  
19 there. We're salvaging this forest fire and now we  
20 have a large inventory of wood in our yard to discard  
21 wood, and for the type of products we are making this  
22 wood was excellent and it's increased our business  
23 about 50 per cent within a month because we have an  
24 inventory. And most of the other times we're losing  
25 50, if not more. Most of the times we just cannot

1 supply, and it's out there.

2 Another thing too is we had an incident  
3 there where we had a fellow in the Cochrane area who  
4 horse logged some logs off of Quebec Ontario Paper and  
5 these logs were on a third party agreement through  
6 Normack Peron and Ontario Quebec Paper, and this young  
7 fellow was forced to sell these logs to Normack Peron,  
8 but he didn't want to, he wanted to sell his logs on  
9 the free market, he didn't want to be dictated. He  
10 thought this was a free country and people don't get  
11 dictated, but obviously the MNR says you either sell  
12 that wood to him or you don't cut it.

13 So then they came up with another scheme  
14 which is what you call third party -- first right of  
15 refusal. I tell them what I'm going to pay for the  
16 logs, but the other buyer, they tell them what I'm  
17 going to pay for the logs, but I don't know what he's  
18 paying for them, normack Peron, so we did acquire this  
19 wood and by acquiring this wood we made some economical  
20 price plus this wood was brought into our yard.

21 The irony of this whole thing is that  
22 same week the MNR was building a dock for Porcupine  
23 Lake and could not acquire that size of wood and they  
24 bought that wood. Now, this is just one example in the  
25 system that shows you where large wood is being used to

1 produce paper products, small dimensional wood. We can  
2 make large dimensional wood where, there is a market  
3 for our wood product just locally, mostly in the mining  
4 industry, in the construction industry and our domestic  
5 uses in our north.

6 Right now I believe in British Columbia  
7 they have tried a system of giving all to one and none  
8 for anyone else, but now they're turning their tide and  
9 they're going into this more and encouraging more  
10 entrepreneurs, small ones in the wood business.

11 I believe that the Ministry has taken all  
12 their eggs, you might as well say, and put them in one  
13 basket. Right now we have sort of a recession in  
14 northern Ontario, when one closes we all suffer and I  
15 don't believe that is right. I think the resource  
16 should be shared so these things don't happen and that  
17 our young people that we have, my children, their  
18 children, grandchildren, have something that they can  
19 work for. Not everyone wants to work for someone, a  
20 lot of people want to work for themselves.

21 And there's another thing too is stumpage  
22 fees. We have a lot of wasted products that we have,  
23 not products but trees that we leave in the forest and  
24 to encourage other users of this, I would suggest maybe  
25 a lower stumpage fee could be applied to encourage the

1 use of these products, especially cedar, which is one  
2 of the highest stumpage fees of all and it's one of the  
3 most that stays behind, abused, and I'm sure with  
4 smaller stumpage fee this fiber could be used.

5 MR. CASSIDY: Was that cedar, Mr. Kapel?

6 MR. KAPLAN: Yes. And that is about all  
7 I have to say in my saga. The only thing I have is  
8 comments and suggestions, very few, it won't take too  
9 much of your time.

10 MADAM CHAIR: Go ahead, Mr. Kapel.

11 MR. KAPLAN: Well, one comment I have to  
12 say and it's very sad to me to say this as a  
13 northerner. I come to Toronto, this is the first time  
14 I have been in Toronto for many years, and it's hard to  
15 believe that you have more trees growing in the City of  
16 Toronto than there are growing in some areas in the  
17 forest where we're supposed to be in the forest  
18 industry. I cannot believe it, and I hope that with  
19 all this environmental hearing that the Ministry and  
20 the people of this province would benefit in an  
21 economic future.

22 And I would like to see our resources  
23 harvested forever not on a short term, but a long term,  
24 and I also suggest that the Ministry needs some type  
25 of, a watch dog or something like we have when we go to



1 a municipality, we have like a committee of  
2 adjustments, something like where the public has more  
3 of an input not just anyone walks in off the street and  
4 walks out.

5 And also, people who work for the MNR  
6 should be able to come forth and speak and be heard  
7 without any discrimination if they see wrongdoing.  
8 This I find. They all say the same thing, they would  
9 love to come forward there are many good people working  
10 for the Ministry, but -- and I would like to also thank  
11 this Board for listening and also Forests for Tomorrow  
12 for helping me present our concerns.

13 Thank you very much.

14 MADAM CHAIR: Thank you very much, Mr.  
15 Kapel and Mrs. Kapel.

16 Mr. Cassidy, are you going to be  
17 cross-examining?

18 MR. CASSIDY: Yes.

19 MADAM CHAIR: Shall we start now.

20 MR. CASSIDY: Certainly.

21 MADAM CHAIR: Do you want to switch  
22 places with Mr. Lindgren?

23 MR. CASSIDY: No.

24 MADAM CHAIR: How long will you be, Mr.  
25 Cassidy?

1 MR. CASSIDY: I may not finish today if  
2 we stop at four.

3 CROSS-EXAMINATION BY MR. CASSIDY:

4 Q. Mr. Kapel, I'm going to show you some  
5 articles which will highlight an exhibit and then we  
6 will ask you some questions about them. I have copies  
7 for the Board.

8 MR. CASSIDY: Madam Chair, we can  
9 describe this as a collection of newspaper articles and  
10 I can describe them being one, a article from the  
11 Northern Times dated May 8th, 1985; an article from the  
12 Le Nord, spelled -- first word, L-e, second word  
13 N-o-r-d, dated May 15th, 1985, and an article from the  
14 Northern Times dated May 15th, 1985. Can we have these  
15 all filed as the next exhibit.

16 MADAM CHAIR: 1492.

17 ---EXHIBIT NO. 1492: Collection of newspaper articles  
18 submitted by OFIA/OLMA consisting  
19 of articles in Northern Times  
20 dated May 8, 1985 and May 15,  
1985 and Le Nord dated May 15,  
1985.

21 MR. CASSIDY: Q. Just take a brief  
22 minute to review these, Mr. Kapel, and then I'll ask  
23 you some questions.

24 A. Okay, you may ask me the first one.

25 Q. Just hang on a second, sir. I would

1 like to refer you to some portions of this where it  
2 refers to public access to Brunswick Lake and it refers  
3 to what it calls - and I'm looking at the very first  
4 page, a highly spirited public meeting where the  
5 district manager was discussed in some fashion, it's  
6 broken off in that part.

7 If you look in the further column you  
8 will see that it talks about:

9 "The reason local sportsmen are so riled  
10 up is the decision of the government to  
11 put a freeze on new cottages on the lake  
12 while existing commercial lodges, two  
13 recreation, I believe the word is,  
14 "...set ups and the Spruce Falls Power  
15 and Paper Company forest lodge are  
16 allowed to remain. To make matters  
17 worse, say the sportsmen, the MNR  
18 destroyed a publicly funded forestry  
19 access road which leads to the lake."  
20 They point out that MNR destroyed the  
21 road the second time after sportsmen  
22 fixed it up on their own."

23 If I could also refer you to the third  
24 paragraph on that page where Mr. Lightheart, who I  
25 understand was the MNR district manager at the time; is

1       that correct?

2                   A.   Correct.

3                   Q.   He explained that:

4                   "...road CSR 7 was built "for a specific  
5                   purpose...and it is no longer needed."

6                   Since that is the case, the MNR is no  
7                   longer maintaining the road...", and I'm  
8       paraphrasing here, moving along,

9                   "...creating a safety hazard."

10                  At that point in his comment, in this  
11       meeting apparently that the number of people numbering  
12       over 100 jeered the district manager and the Chairman  
13       of the meeting Mr. Oulette:

14                  "...suggested that the road was ordered  
15                  closed for reasons "more political than  
16                  logical" and hinted that the commercial  
17                  lodges and others already established  
18                  on the lake exerted political pressure to  
19                  keep the general population away."

20                  If you flip to the next page you will see  
21       in the right-hand column a correction where the Spruce  
22       Falls lodge had been sold over a year ago, in reference  
23       to the lodge on the first page of this document, but it  
24       goes on to state in the first full paragraph in the  
25       middle there:



1 "Mr. Lightheart was later forced to  
2 respond to comments from the floor that  
3 one commercial lodge operator frequently  
4 asked anglers "what are you doing on my  
5 lake?" and told them to leave."

6 Mr. Lightheart is purported to have  
7 said,

8 "I have (since) had a few chats with (the  
9 operator), said Mr. Lightheart."

10 If you flip over to the next page you see  
11 an article from the Le Nord Magazine, again we're  
12 referring to Exhibit 1492, which has been translated  
13 where the Mayor of Kapuskasing, Mr. Ted Jewell, is  
14 reported to be always strongly in favour of retaining  
15 road access to Brunswick Lake for fishermen and  
16 interested parties. The Mayor is of the opinion that a  
17 fish filled lake would contribute to tourism  
18 development in the region.

19 I would also like to refer you now to  
20 Volume 236 of the transcript which I'm simply going to  
21 read three lines from, which is Volume 236 from the  
22 transcript of the September 19th, 1990, that is one  
23 month and ten days ago, where Mr. Jewell testified in  
24 Hearst and stated that:

25 "We are of the opinion that no legitimate

1 access to any part of the forest should  
2 be unduly withheld and that access should  
3 be maintained while such roads are part  
4 of the FMA as well as after when they may  
5 no longer serve a specific forestry  
6 need."

7 And my question to you is, sir, would you  
8 agree that the people in the Kapuskasing area do not  
9 support your views on how access to the resources at  
10 Brunswick Lake should be managed?

11 A. Repeat that again?

12 Q. Do you agree that the people in the  
13 Kapuskasing area do not support your views on how  
14 access to the resources at Brunswick Lake should be  
15 managed?

16 A. Yes, I guess so.

17 Q. Thank you. Now, are you aware that  
18 Spruce Falls Power and Paper has removed the CSR 7A  
19 road on two occasions only to have it built back up by  
20 local anglers?

21 A. Correct. May I comment to you on  
22 that one?

23 Q. Go ahead.

24 A. That road was not to my doing, that  
25 was to the MNR doing the removal.

1 Q. Yes.

2 A. And that was understood when I bought  
3 that place. And another quote you have here, that you  
4 say the article says that I told people to get off the  
5 lake.

6 Q. I didn't suggest that was you, sir.

7 A. Yes. There is only one person I  
8 didn't tell to get off the lake, I just told him that  
9 he would have to move. When I was tearing down the  
10 cabin of Spruce Falls, the man had put a tent in front  
11 of my operation and I had told him that I had a work  
12 permit from the Ministry of Natural Resources and this  
13 piece of land was in total under the work permit and he  
14 would have to move. Now, that's it.

15 Q. I want to move on to Doherty Creek.  
16 You filmed your video, as Mr. Lindgren indicated in a  
17 question to you, in early August, 1988.

18 A. But look, I don't think we have to  
19 worry too much about dates here about this.

20 Q. Well, I'm interested in dates, sir,  
21 so I'm going to ask my question and you can answer it.

22 A. Because ...

23 Q. You I believe indicated in your  
24 evidence that subsequent to your video there have been  
25 further steps taken to mitigate the impacts near that

1 bridge; is that correct, you said that earlier this  
2 morning?

3 A. After the first time.

4 Q. Right. Well, in fact there were  
5 several steps taken; were there not? I would like to  
6 review those with you, and I would like to show you a  
7 letter and have you briefly review it and I will ask  
8 some questions.

9 MR. LINDGREN: Mr. Cassidy, is there a  
10 reason this has not been presented to the witness  
11 previously to this point in time?

12 MR. CASSIDY: Because the evidence was  
13 decided by me to be produced to the Board at the point  
14 at which the evidence was produced this morning.

15 MR. LINDGREN: Well, in fairness I want  
16 to be sure that Mr. Kapel has an opportunity to review  
17 it before any questions are put to him on it.

18 MR. CASSIDY: It's one and a half pages  
19 Madam Chair I'm attempting to have the witness read it  
20 over.

21 MADAM CHAIR: This two-page letter.

22 MR. CASSIDY: There is an attachment as  
23 well, Madam Chair, it's dated October 6th, 1988 from  
24 Spruce Falls Power and Paper signed by Mr. Ken Virgo to  
25 the Ministry of Natural Resources, attention Ms.



1 Vivienne Iles. I'm sorry, I said Virgo, it's Durst,  
2 D-u-r-s-t.

3 MADAM CHAIR: All right. This will be  
4 Exhibit 1493.

5 ---EXHIBIT NO. 1493: Two-page letter dated October 6,  
6 1988 from Ken Durst, Spruce Falls  
7 Power and Paper, to Ms. Vivienne  
8 Iles, MNR.

8 MR. MARTEL: Is there a reason why  
9 there's two copies of these attached together.

10 MR. CASSIDY: No reason. Probably a  
11 stapler fault then.

12 MR. MARTEL: Because I have two of each.  
13 On each of them there's two letters.

14 MR. CASSIDY: I will just come take a  
15 quick look, Mr. Martel.

16 THE WITNESS: Go ahead.

17 MR. CASSIDY: Q. All right. The steps,  
18 would you agree Mr. Kapel, that the company took to  
19 deal with this problem are outlined in points (a)  
20 through (h) below?

21 A. Yeah.

22 Q. And --

23 A. But also I disagree for the length of  
24 time length.

25 Q. Well, that's fine, sir, but do you

1 agree that this letter is referring to events that  
2 occurred in many cases after your video of August 6th,  
3 1986.

4 A. Yes, I believe after my video of  
5 August 6th.

6 Q. Yes, that's when your video was  
7 dated?

8 A. I believe --

9 MR. LINDGREN: I believe it was '88.

10 MR. CASSIDY: What year did I say?

11 MR. LINDGREN: '86.

12 MR. CASSIDY: I apologize, August 6, '88.

13 Q. In fact if we refer to Item (e) it  
14 states:

15 "The bridge has been removed, except for  
16 the abutments."

17 That is an example of an effort that was  
18 done after your video; is that correct?

19 A. Yes.

20 Q. All right.

21 A. Matter of fact it was due to a letter  
22 written in here to Minister Bradley of the environment.

23 Q. And are you aware --

24 A. Said he would help, look into it for  
25 me.

1 Q. Are you aware of the steps taken in  
2 Item (a) that was:

3 "Poplar was laid down in the ditch,  
4 parallel to the gravel road with the tops  
5 pointing uphill, serving to break the  
6 - rush of water from the hilltop."

7 Are you aware of those efforts?

8 A. Yeah, it was my suggestion that they  
9 build three ditches along each side of the Doherty  
10 Creek.

11 Q. And are you aware that berms, as in  
12 Item (b):

13 "Berms were built on both sides of the  
14 road and a ditch was constructed through  
15 the gravel road, draining both  
16 ditches from the top of the southern hill  
17 into an offtake on the east."

18 A. That was my suggestion.

19 Q. I see. And were you aware that two  
20 new berms were constructed there, again ditched  
21 through, effectively draining to the east?

22 A. Mm-hmm

23 Q. I see. And were you -- well, that's  
24 a yes, you're aware of that being done?

25 A. Yes.

1 Q. Yes. And the berms on the west side  
2 Item (f) were:

3 "...rebuilt and raised to allow ponding  
4 and spillage into the green bush."

5 Are you aware that was done?

6 A. Yes.

7 Q. Are you aware that the east side berm  
8 has been rebuilt and offtake lowered so that the waters  
9 now drain off into the reserve. Are you aware that was  
10 done?

11 A. Yes.

12 Q. And you are aware understand Item (h)  
13 that the old berm on the west side was reshaped and  
14 it's offtake cleaned out.

15 A. Yes, I could talk on --

16 Q. I'm referring to Item (h) if you want  
17 to review it.

18 A. Yeah, mm-hmm.

19 Q. It's on page 2 of the letter.

20 A. What side are you on, the north end  
21 side of the stream or the south side?

22 Q. North side.

23 A. North side. Mm-hmm.

24 Q. Yes?

25 A. Yes.



1 Q. All right. And you are aware that  
2 the company committed to carrying out monitoring to  
3 ascertain whether the seeding or other rehabilitative  
4 steps would be required; In other words, to stabilize  
5 list this area?

6 A. I don't know what type of monitoring  
7 they did but they did stabilize the area finally.

8 Q. Thank you. And if you look to the  
9 third --

10 A. But why did it take so long to have  
11 that area stabilized.

12 Q. If you look to the attachment, sir,  
13 on the third page here of Exhibit 1493, does that map  
14 fairly represent the scheme or plan that was used to  
15 rehabilitate the area?

16 A. I would say roughly to my knowledge  
17 it looks fairly, I would have to go back to say for  
18 sure, it does look like that type of action was taken.

19 Q. Do you consider yourself to be an  
20 expert in bridge construction and rehabilitation?

21 A. No, sir.

22 Q. I see. So if there was -- if I gave  
23 you information that this was the result of a number of  
24 efforts and a number of very qualified survey people,  
25 you would not consider it a common sense solution to

1 design a problem such as that; would you?

2 A. No, that is all they had to do, was  
3 to go in the first place, what I suggested would be a  
4 common sense. That's all they had to do was dig two  
5 retaining ditches on both sides, well they did one  
6 across the side and just take some good quality topsoil  
7 that was in the area and drop it in front. That would  
8 have solved the whole problem right there.

9 Q. Are you aware that survey technicians  
10 had to be brought in to design this plan that's  
11 referred to on the third page of Exhibit 1493?

12 A. Well, if they think they need a  
13 survey technician. I guess they --

14 Q. Sorry. Go ahead.

15 A. I guess that's what they did.

16 Q. I see.

17 A. If they are willing to pay them to do  
18 what they wanted, that's there.

19 Q. That was after several initial  
20 efforts were unsuccessful; do you recall that?

21 A. Several.

22 Q. Well, the summer before.

23 A. Just the one time it was unsuccessful  
24 when they dumped all the gravel.

25 Q. The efforts in the summer before; is

1       that correct?

2                   A.   Yeah.

3                   Q.   I see.   And that common sense  
4       solution didn't work out; is that correct?

5                   A.   Yeah, because they just dumped a pile  
6       of garbage -- excuse me, a pile of gravel one place.  
7       Anyone could see that it wouldn't work out.

8                   Q.   But you're not an expert in bridge  
9       construction or rehabilitation; are you, as you just  
10      indicated?

11                  A.   Well, rehabilitation, you would have  
12      to come to my place and I rehabilitated my shoreline  
13      very good and I'm not an expert.

14                  Q.   Thank you.   Now, I would like to move  
15      to your evidence about the rookery.   Are rookeries  
16      rare?

17                  A.   That's a good question.

18                  Q.   Thank you.   Would you answer it.

19                  A.   I don't know.   It doesn't matter if  
20      they are rare or not, I don't think they should be  
21      destroyed.

22                  Q.   What's your best answer on that?

23                  A.   Well, they are going to have to be  
24      protected in the future.

25                  Q.   No, your best answer to my question;

1 are they rare?

2 A. I don't think so -- yes, I think so  
3 because I know of one more in the area, that is all  
4 that I was told by a Ministry official, that is about  
5 it.

6 Q. The reason why I ask is, I recall you  
7 giving that evidence they're not that common in the  
8 area; are they?

9 A. Right, no.

10 Q. My information, sir, is that the  
11 company doing the harvest was not notified of the  
12 rookery's existence and you say you saw no evidence of  
13 planning around the rookery; is that correct?

14 My information also, sir, is that three  
15 nests were felled out of 22 nests in total and the  
16 company suspended operations in the area on its own  
17 initiative as well as felling eight poplar and 14  
18 spruce. Have you done any surveys of the rookery that  
19 would dispute those figures?

20 A. No.

21 Q. You are not a silvicultural expert;  
22 are you, a silviculturalist as they say?

23 A. No, I was raised on a farm.

24 Q. Right.

25 MR. MARTEL: Can we stop for a moment,



1 Mr. Cassidy, because I have a little -- I think you  
2 indicated that only three nests were cut -- or trees  
3 with nests were cut involving three nests.

4 I think the information of, and I wanted  
5 to ask this during the filming when we saw that, it was  
6 in two segments. We're talking about the same rookery?

7 THE WITNESS: Yes, sir.

8 MR. MARTEL: And you just said there was  
9 only, to your knowledge, only three nests on the  
10 ground, but in fact you showed us I think a good many  
11 more nests on the ground than three.

12 MR. LINDGREN: Well, Mr. Martel --

13 MR. CASSIDY: I said three nests were  
14 felled, Mr. Martel.

15 THE WITNESS: They fell.

16 MR. MARTEL: Yeah.

17 MR. CASSIDY: As oppose to blowdown.

18 MR. LINDGREN: Well, in fairness to the  
19 witness, Mr. Martel, Mr. Cassidy, I think the question  
20 was: Have you done any surveys, and you said no to  
21 that. That was the question and answer.

22 MR. CASSIDY: Yes.

23 Q. Have you done any surveys that would  
24 dispute --

25 A. The only survey I did was with

1 Ministry of Natural Resources camera.

2 MR. MARTEL: That is why I'm coming back  
3 to the whole thing of how many were there actually by  
4 blowdown or how many were there actually by cutting.

5 MR. CASSIDY: My information, sir, is  
6- that there were three that were felled by cutting and  
7 the company then suspended its operation on its own  
8 initiative and I'm prepared to call evidence, if  
9 necessary, to prove that.

10 MR. MARTEL: And the rest were as a  
11 result of blowdown you're suggesting?

12 MR. CASSIDY: Well, it would be appear to  
13 be the case.

14 MR. MARTEL: Or some reason.

15 MR. CASSIDY: There were also a total of  
16 eight poplar and 14 spruce felled in the area of the  
17 rookery. Again, I'm prepared to call evidence to prove  
18 that, if necessary.

19 Q. Now, I would like to move to your  
20 comments on regeneration. In paragraph 12 of your  
21 witness statement you state that the regeneration  
22 appears to be of poor quality. And would you agree  
23 that you made a number of criticisms of the  
24 regeneration in the efforts in the Brunswick Lake  
25 peninsula in your video?

1 A. Mm-hmm.

2 Q. I would like to show you two  
3 regeneration surveys.

4 MR. LINDGREN: Mr. Cassidy, is this a  
5 list that you will be providing to the witness?

6 MR. CASSIDY: Well, it depends what this  
7 witness is going to talk about.

8 MR. LINDGREN: Well, it's not in his  
9 witness statement.

10 MR. CASSIDY: If he needs time to review  
11 this overnight, we can come back tomorrow. It's five  
12 to four, I don't think once you see the documentation  
13 you will think it needs a lot of review.

14 MADAM CHAIR: Mr. Kapel, would you rather  
15 look this over this evening or would you like to look  
16 at it now.

17 MR. KAPLAN: I wouldn't mind looking it  
18 over this evening.

19 MR. CASSIDY: That is fine. I also have  
20 a third document he could look over.

21 MADAM CHAIR: Anything else, Mr. Cassidy?

22 MR. CASSIDY: As I indicated I have one  
23 other, I'll just pass out.

24 MADAM CHAIR: Mr. Cassidy, the two  
25 regeneration surveys were to be stapled together?

1 MR. CASSIDY: No.

2 MADAM CHAIR: You gave me these two  
3 sheets, then these.

4 MR. CASSIDY: If I could just have that  
5 back I will sort it out for you.

6 THE WITNESS: How come I have got three  
7 the same.

8 MR. MARTEL: I have got two the same.

9 ---Discussion off the record

10 THE WITNESS: I think this gentlemen just  
11 got a little bit excited.

12 MADAM CHAIR: These three go together?

13 MR. CASSIDY: No, that is one exhibit and  
14 that's a separate exhibit, and this is the third  
15 exhibit which I will refer to in a minute. This is the  
16 third exhibit and there's two copies of that. (handed)

17 ---Discussion off the record

18 MADAM CHAIR: Thank you.

19 MR. CASSIDY: This is the third exhibit,  
20 Mr. Kapel. (handed) Have you sorted it out, Madam  
21 Chair?

22 Now that we have got it all sorted out,  
23 the first exhibit we can enter is the regeneration  
24 survey, a one-page document, dated September 10th,  
25 1987. It's one page. Do you have that, Mr. Martel?



1 MR. MARTEL: I just numbered them  
2 differently from you. I took them in the order you  
3 gave them to me.

4 MADAM CHAIR: That will be Exhibit 1494.  
5 ---EXHIBIT NO. 1494: One-page regeneration survey  
6 dated September 10, 1987.

7 MR. CASSIDY: The next exhibit is a  
8 regeneration survey, it's a two-page document dated  
9 September 26th, 1990 and looks like this. Exhibit  
10 1495, Madam Chair?

11 MADAM CHAIR: That will be 1495.

12 MR. CASSIDY: The date you will see is  
13 referred to on the second page.

14 MADAM CHAIR: Mm-hmm.

15 ---EXHIBIT NO. 1495: Two-page regeneration survey  
16 dated September 25, 1990.

17 MR. CASSIDY: And the third document is  
18 Table 1 from the Gordon Cosens Forest FMA which is a  
19 large two-page document which we could call -- 1985 to  
20 1990 Gordon Cosens FMA, which we could call Exhibit  
21 1496.

22 MR. HUFF: What year was that?

23 MR. CASSIDY: 1985 to 1990. This is  
24 Table 1 which should be found in the ground rules  
25 portion of that FMA, Madam Chair.

1        ---EXHIBIT NO. 1496:    Two-page document depicting Table  
   1 from 1985-1990 Gordon Cosens  
2     Forest FMA.

3 MR. CASSIDY: And if Mr. Kapel does need  
4 to review that overnight, we could commence tomorrow  
5 morning with that. And I can advise that I will  
6 probably be another 15 minutes to half an hour in my  
7 cross-examination of these and a few final questions.

8 MADAM CHAIR: Fine, Mr. Cassidy.

9 Ms. Blastorah, how long will you be  
10 tomorrow?

11 MS. BLASTORAH: I expect I would be about  
12 half an hour to 45 minutes at the outside, Mrs. Koven,  
13 and I don't at this point anticipate relying on any  
14 documents other than those filed by Mr. Lindgren, and  
15 we will be filing some interrogatories, but I don't  
16 think I'll be referring to them.

17 I assume that the witness has a complete  
18 copy of the proposed policy options - I have forgotten  
19 the exact title of it, that is the document that was  
20 included in the OFAH interrogatory.

21 MR. LINDGREN: I will provide him with a  
22 copy.

23 MS. BLASTORAH: Thank you.

24 MR. LINDGREN: Are you going to be  
25 referring to --

1 MS. BLASTORAH: I think that is the only  
2 document I'm going to be referring to.

3 MR. LINDGREN: Any particular section?

4 MS. BLASTORAH: I don't know at this  
5 time. The witness filed part of it.

6 MR. LINDGREN: (inaudible)

7 THE REPORTER: I'm sorry, I can't hear  
8 you.

9 MR. LINDGREN: I was asking if Ms.  
10 Blastorah is asking this witness to read this entire  
11 document again tonight.

12 MS. BLASTORAH: No, I am not, Mrs. Koven.  
13 I think I will be perhaps referring mostly to the  
14 portion of that document that the witness filed, and I  
15 apologize, I assumed he read it since he filed it, but  
16 I guess I'm in error.

17 I think the other part I would be  
18 referring to would be the introduction and I believe  
19 that is all.

20 MR. LINDGREN: Does Mr. Cassidy have any  
21 further documents for this witness?

22 MR. CASSIDY: One moment.

23 MS. BLASTORAH: I'm sorry, there is one  
24 other document and I'm not sure whether Mr. Lindgren  
25 has it as part of that, I believe there was a letter

1       dated April 2nd that went out with that document when  
2       it was filed.

3                   MR. HUFF: April 5th.

4                   MR. CASSIDY: That's it.

5                   MR. LINDGREN: I've got it.

6                   MS. BLASTORAH: You have got it.

7                   MADAM CHAIR: Do we have that in the  
8       interrogatories, Mr. Lindgren, the April 5th letter?

9                   MR. LINDGREN: No.

10                  MS. BLASTORAH: I can file that document  
11       if I refer to it tomorrow, Mrs. Koven. I just want to  
12       make sure the witness had a copy of it.

13                  MADAM CHAIR: Mr. Kapel, the document Ms.  
14       Blastorah is talking about is in the interrogatory.  
15       You have got it?

16                  THE WITNESS: Yeah, yeah.

17                  MADAM CHAIR: Okay, good.

18                  THE WITNESS: Right here.

19                  MADAM CHAIR: That's it.

20                  MR. CASSIDY: Maybe, since this the first  
21       time I believe that a "lay witness" has been asked to  
22       stay over in cross-examination he could be given the  
23       usual reminder not to discuss his evidence with anyone  
24       outside the hearing, including his own counsel, and I  
25       can appreciate the unusual nature of this, but that



1 .. would include his own wife in these circumstances since  
2 that rule is, as you know, rather strictly enforced,  
3 and I would ask in this case it will be as well.

4 MADAM CHAIR: Yes, Mr. Cassidy.

5 You have explained the rules during  
6 cross-examination to Mr. and Mrs. Kapel?

7 MR. LINDGREN: Yes, I have.

8 MADAM CHAIR: Thank you. And Mr. Martel  
9 said you can't talk to your wife, Mr. Kapel.

10 MR. CASSIDY: Let's just clarify this,  
11 that he's free to talk about anything but what he's  
12 given evidence on today.

13 MR. MARTEL: Right.

14 MR. CASSIDY: And, you know, obviously I  
15 want to send him away with marital bliss having  
16 recently acquired it myself.

17 MADAM CHAIR: Mr. Cassidy is reminding us  
18 that there is a rule in effect when a witness is on the  
19 stand with respect to cross-examination, and we simply  
20 ask that you not discuss your evidence with anyone  
21 else.

22 And I guess Mr. Cassidy is pointing out  
23 that we're feeling a bit cautious because Mrs. Kapel  
24 has helped you accumulate this evidence and a  
25 discussion with her might change something that you

1       said to us today.

2                   THE WITNESS:   Oh.

3                   MADAM CHAIR:   Is that correct, Mr.

4       Lindgren?

5                   MR. LINDGREN:   That is correct.   I can  
6       review this with Mr. Kapel at the close of proceedings  
7       today.

8                   MR. HUFF:   And Mrs. Kapel.

9                   THE WITNESS:   This is both on behalf of  
10      me and my wife that we have done this, and...

11                  MADAM CHAIR:   The Board understands that.  
12      Perhaps we should have sworn in Mrs. Kapel as well.

13                  THE WITNESS:   That's what I would like to  
14      see, swear my wife in as well.

15                  MADAM CHAIR:   I think that it is too late  
16      for that, because that would have involved her giving  
17      evidence as well.

18                  Do the rest of counsel have any objection  
19      if Mr. Lindgren sits down with Mr. Kapel and goes over  
20      the rules very quickly?

21                  MR. CASSIDY:   As an officer of the court,  
22      or officer of the hearing, I trust Mr. Lindgren to deal  
23      with his obligation in a manner in which we would all  
24      expect ourselves to deal with it.

25                  MADAM CHAIR:   It sounds like we're going

1 to be finished by noon tomorrow, if that helps you make  
2 any travel arrangements.

3 MR. WITNESS: Oh, I have...

4 MADAM CHAIR: Okay, good.

5 Mr. Nixon will be ready to appear before  
6 the Board tomorrow?

7 MR. LINDGREN: That's correct, Madam  
8 Chair.

9 MADAM CHAIR: Thank you very much, and we  
10 will be back at nine o'clock tomorrow morning.

11 ---Whereupon the hearing adjourned at 4:05 p.m., to be  
12 reconvened on Tuesday, October 30th, 1990,  
commencing at 9:00 a.m.

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